

1998-99

The Parliament of the  
Commonwealth of Australia

HOUSE OF REPRESENTATIVES

*Presented and read a first time*

**Australian Security Intelligence  
Organisation Legislation Amendment  
Bill 1999**

**No.     , 1999**

*(Attorney-General)*

**A Bill for an Act to amend the *Australian Security  
Intelligence Organization Act 1979* and certain other  
Acts, and for related purposes**



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## Contents

1	Short title .....	1
2	Commencement .....	1
3	Schedule(s) .....	2
<b>Schedule 1—Warrant provisions etc.</b>		3
Part 1—Australian Security Intelligence Organization Act 1979		3
Part 2—Application and transitional provisions		25
<b>Schedule 2—Penalty provisions</b>		26
Part 1—Amendments		26
<i>Australian Security Intelligence Organization Act 1979</i>		26
Part 2—Application		28
<b>Schedule 3—The spelling of “Organization”</b>		29
Part 1—Amendment of various Acts		29
<i>Acts Interpretation Act 1901</i>		29
<i>Administrative Appeals Tribunal Act 1975</i>		29
<i>Administrative Decisions (Judicial Review) Act 1977</i>		30
<i>Archives Act 1983</i>		30
<i>Australian Postal Corporation Act 1989</i>		30
<i>Australian Radiation Protection and Nuclear Safety Act 1998</i>		30
<i>Australian Security Intelligence Organization Act 1979</i>		30
<i>Crimes Act 1914</i>		30
<i>Customs Act 1901</i>		31
<i>Disability Discrimination Act 1992</i>		31
<i>Freedom of Information Act 1982</i>		31
<i>Human Rights and Equal Opportunity Commission Act 1986</i>		31
<i>Human Rights and Responsibilities Commission Act 1986</i>		31
<i>Inspector-General of Intelligence and Security Act 1986</i>		31
<i>Legislative Instruments Act 1999</i>		32
<i>Merit Protection (Australian Government Employees) Act 1984</i>		32

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<i>Migration Act 1958</i>	32
<i>National Crime Authority Act 1984</i>	32
<i>Occupational Health and Safety (Commonwealth Employment) Act 1991</i>	33
<i>Privacy Act 1988</i>	33
<i>Public Service Act 1922</i>	33
<i>Remuneration and Allowances Act 1990</i>	33
<i>Remuneration Tribunal Act 1973</i>	33
<i>Sex Discrimination Act 1984</i>	33
<i>Telecommunications Act 1997</i>	34
<i>Telecommunications (Interception) Act 1979</i>	34
Part 2—Other amendments	36
<i>Telecommunications (Interception) Act 1979</i>	36
<b>Schedule 4—Financial Transaction Reports Act 1988</b>	37
<b>Schedule 5—Inspector-General of Intelligence and Security Act 1986</b>	41
<b>Schedule 6—Taxation Administration Act 1953</b>	44

1     **A Bill for an Act to amend the *Australian Security***  
2     ***Intelligence Organization Act 1979* and certain other**  
3     **Acts, and for related purposes**

4     The Parliament of Australia enacts:

5     **1 Short title**

6                     This Act may be cited as the *Australian Security Intelligence*  
7                     *Organisation Legislation Amendment Act 1999*.

8     **2 Commencement**

9                     (1) This Act (other than Schedule 3) commences on the day on which  
10                     it receives the Royal Assent.



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## **Schedule 1—Warrant provisions etc.**

### **Part 1—Australian Security Intelligence Organization Act 1979**

#### **1 Section 4 (subparagraph (a)(iv) of the definition of *permanent resident*)**

Omit “illegal entrant”, substitute “unlawful non-citizen”.

#### **2 Section 14**

Omit “Governor-General” (wherever appearing), substitute “Minister”.

#### **3 After paragraph 17(1)(c)**

Insert:

(ca) to furnish security assessments to a State or an authority of a State in accordance with paragraph 40(1)(b);

#### **4 Paragraph 17(1)(e)**

After “section 27A”, insert “or 27B”.

#### **5 After section 17**

Insert:

#### **17AA Fees for advice and other services**

- (1) The Director-General may determine in writing that fees are payable by persons for the giving of advice or the provision of services by the Organisation to the persons at their request.
- (2) Unless the Director-General determines otherwise, the Organisation may refuse to give the advice, or provide the service, to a person until the fee is paid in whole or part. If the whole or part of the fee is not paid before the advice is given or the service is provided, the amount concerned is a debt due to the Commonwealth and may be recovered by the Commonwealth in a court of competent jurisdiction.

1 (3) The amount of the fee must not exceed the reasonable costs to the  
2 Organisation of giving the advice or providing the service.

3 (4) The Director-General may, on application in writing by a person  
4 who is or will be required to pay a fee, if the Director-General  
5 considers it appropriate in the circumstances:

- 6 (a) not require the person to pay any of the fee; or  
7 (b) require the person to pay only a specified part of the fee.

## 8 **6 Paragraph 18(3)(c)**

9 Repeal the paragraph, substitute:

- 10 (b) where the information has come into the possession of the  
11 Organisation outside Australia or concerns matters outside  
12 Australia and the Director-General or the officer so  
13 authorised is satisfied that the national interest requires the  
14 communication—the information may be communicated to:  
15 (i) a Minister; or  
16 (ii) a Department; or  
17 (iii) an intelligence or security agency; or  
18 (iv) an officer of a Police Force of a State or Territory; or  
19 (v) a member or special member of the Australian Federal  
20 Police; or  
21 (vi) a member, or a member of the staff, of the National  
22 Crime Authority.

## 23 **7 Section 22**

24 Insert:

25 *carrier* means:

- 26 (a) a carrier within the meaning of the *Telecommunications Act*  
27 *1997*; or  
28 (b) a carriage service provider within the meaning of that Act.

## 29 **8 Section 22**

30 Insert:

31 *computer* means a computer, a computer system or part of a  
32 computer system.



1     **9 Section 22**

2             Insert:

3                     *data* includes information, a computer program or part of a  
4                     computer program.

5     **10 Section 22**

6             Insert:

7                     *telecommunications facility* means a facility within the meaning  
8                     of section 7 of the *Telecommunications Act 1997*.

9     **11 Subsection 24(1)**

10                    After “relevant warrants”, insert “or relevant device recovery  
11                    provisions”.

12     Note:     The heading to section 24 is altered by adding “**etc.**” after “**warrants**”.

13     **12 Subsection 24(2)**

14                    After “relevant warrant”, insert “or relevant device recovery provision”.

15     **13 Subsection 24(3)**

16             Insert:

17                     *relevant device recovery provision* means subsection 26(6A),  
18                     26B(7), 26C(7), 27A(3A) or (3B).

19     **14 Subsection 24(3) (definition of *relevant warrant*)**

20                    Omit “section 25, 26, 27, 27A or 29”, substitute “section 25, 25A, 26,  
21                    26B, 26C, 27, 27A, 27AA or 29”.

22     **15 Subsection 24(3) (paragraph (b) of the definition of *senior***  
23                    ***officer of the Organization*)**

24                    Omit “Manager (Senior Officer Grade A)”, substitute “Coordinator”.

25     **16 Section 25**

26             Repeal the section, substitute:

1       **25 Search warrants**

2                       *Issue of search warrant*

- 3               (1) If the Director-General requests the Minister to do so, and the  
4               Minister is satisfied as mentioned in subsection (2), the Minister  
5               may issue a warrant in accordance with this section.

6                       *Test for issue of warrant*

- 7               (2) The Minister is only to issue the warrant if he or she is satisfied  
8               that there are reasonable grounds for believing that access by the  
9               Organisation to records or other things on particular premises (the  
10              ***subject premises***) will substantially assist the collection of  
11              intelligence in accordance with this Act in respect of a matter (the  
12              ***security matter***) that is important in relation to security.

13                      *Authorisation in warrant*

- 14              (3) The warrant must be signed by the Minister and must authorise the  
15              Organisation to do specified things, subject to any restrictions or  
16              conditions specified in the warrant, in relation to the subject  
17              premises, which must also be specified in the warrant.

18                      *Things that may be specified in warrant*

- 19              (4) The things that may be specified are any of the following that the  
20              Minister considers appropriate in the circumstances:
- 21                      (a) entering the subject premises;
  - 22                      (b) searching the subject premises for the purpose of finding  
23                          records or other things relevant to the security matter and, for  
24                          that purpose, opening any safe, box, drawer, parcel, envelope  
25                          or other container in which there is reasonable cause to  
26                          believe that any such records or other things may be found;
  - 27                      (c) inspecting or otherwise examining any records or other  
28                          things so found, and making copies or transcripts of any such  
29                          record or other thing that appears to be relevant to the  
30                          collection of intelligence by the Organisation in accordance  
31                          with this Act;
  - 32                      (d) removing and retaining for such time as is reasonable any  
33                          record or other thing so found, for the purposes of:

- 1 (i) inspecting or examining it; and
- 2 (ii) in the case of a record—making copies or transcripts of
- 3 it, in accordance with the warrant;
- 4 (e) any thing reasonably necessary to conceal the fact that any
- 5 thing has been done under the warrant;
- 6 (f) any other thing reasonably incidental to any of the above.

7 *Other things that may be specified*

- 8 (5) The Minister may also specify any of the following things if he or
- 9 she considers it appropriate in the circumstances:
  - 10 (a) where there is reasonable cause to believe that data relevant
  - 11 to the security matter may be accessible by using a computer
  - 12 or other electronic equipment found on the subject
  - 13 premises—using the computer or other electronic equipment
  - 14 for the purpose of obtaining access to any such data and to
  - 15 assist in that purpose, adding, deleting or altering other data
  - 16 in the computer or other electronic equipment;
  - 17 (b) using the computer or other electronic equipment to do any
  - 18 of the following:
    - 19 (i) inspecting and examining any data to which access has
    - 20 been obtained;
    - 21 (ii) converting any data to which access has been obtained,
    - 22 that appears to be relevant to the collection of
    - 23 intelligence by the Organisation in accordance with this
    - 24 Act, into documentary form and removing any such
    - 25 document;
    - 26 (iii) copying any data to which access has been obtained,
    - 27 that appears to be relevant to the collection of
    - 28 intelligence by the Organisation in accordance with this
    - 29 Act, to a storage device and removing the storage
    - 30 device;
    - 31 (c) any thing reasonably necessary to conceal the fact that any
    - 32 thing has been done under the warrant;
    - 33 (d) any other thing reasonably incidental to any of the above.

34 *Certain acts not authorised*

- 35 (6) Subsection (5) does not authorise the addition, deletion or
- 36 alteration of data, or the doing of any thing, that interferes with,

1 interrupts or obstructs the lawful use of the computer or other  
2 electronic equipment by other persons, or that causes any loss or  
3 damage to other persons lawfully using the computer or other  
4 electronic equipment.

5 *Authorisation of entry measures*

- 6 (7) The warrant must:
- 7 (a) authorise the use of any force that is necessary and
  - 8 reasonable to do the things specified in the warrant; and
  - 9 (b) state whether entry is authorised to be made at any time of
  - 10 the day or night or during stated hours of the day or night.

11 *Statement about warrant coming into force*

- 12 (8) The warrant may state that it comes into force on a specified day  
13 (after the day of issue) or when a specified event happens. The day  
14 must not begin nor the event happen more than 28 days after the  
15 end of the day on which the warrant is issued.

16 *When warrant comes into force*

- 17 (9) If the warrant includes such a statement, it comes into force at the  
18 beginning of the specified day or when the specified event  
19 happens. Otherwise, it comes into force when it is issued.

20 *Duration of warrant*

- 21 (10) The warrant must specify the period during which it is to be in  
22 force. The period must not be more than 28 days, although the  
23 Minister may revoke the warrant before the period has expired.

24 *Issue of further warrants not prevented*

- 25 (11) Subsection (10) does not prevent the issue of any further warrant.

26 **25A Computer access warrant**

27 *Issue of computer access warrant*

- 28 (1) If the Director-General requests the Minister to do so, and the  
29 Minister is satisfied as mentioned in subsection (2), the Minister  
30 may issue a warrant in accordance with this section.
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1                                    *Test for issue of warrant*

2                                    (2) The Minister is only to issue the warrant if he or she is satisfied  
3                                    that there are reasonable grounds for believing that access by the  
4                                    Organisation to data held in a particular computer (the **target**  
5                                    **computer**) will substantially assist the collection of intelligence in  
6                                    accordance with this Act in respect of a matter (the **security**  
7                                    **matter**) that is important in relation to security.

8                                    *Authorisation in warrant*

9                                    (3) The warrant must be signed by the Minister and must authorise the  
10                                    Organisation to do specified things, subject to any restrictions or  
11                                    conditions specified in the warrant, in relation to the target  
12                                    computer, which must also be specified in the warrant.

13                                    *Things that may be authorised in warrant*

14                                    (4) The things that may be specified are any of the following that the  
15                                    Minister considers appropriate in the circumstances:  
16                                    (a) using:  
17                                           (i) a computer; or  
18                                           (ii) a telecommunications facility operated or provided by  
19                                                   the Commonwealth or a carrier; or  
20                                           (iii) any other electronic equipment;  
21                                    for the purpose of obtaining access to data that is relevant to  
22                                    the security matter and is stored in the target computer and,  
23                                    to assist in that purpose, adding, deleting or altering data in  
24                                    the target computer;  
25                                    (b) copying any data to which access has been obtained, that  
26                                    appears to be relevant to the collection of intelligence by the  
27                                    Organisation in accordance with this Act;  
28                                    (c) any thing reasonably necessary to conceal the fact that any  
29                                    thing has been done under the warrant;  
30                                    (d) any other thing reasonably incidental to any of the above.

31                                    Note:        As a result of the warrant, an ASIO officer who, by means of a  
32                                    telecommunications facility, obtains access to data stored in the target  
33                                    computer etc. will not commit an offence under section 76D or 76E of  
34                                    the *Crimes Act 1914* or equivalent State or Territory laws (provided  
35                                    that the ASIO officer acts within the authority of the warrant).

1 *Certain acts not authorised*

2 (5) Subsection (4) does not authorise the addition, deletion or  
3 alteration of data, or the doing of any thing, that interferes with,  
4 interrupts or obstructs the lawful use of the target computer by  
5 other persons, or that causes any loss or damage to other persons  
6 lawfully using the target computer.

7 *Duration of warrant*

8 (6) The warrant must specify the period during which it is to remain in  
9 force. The period must not be more than 6 months, although the  
10 Minister may revoke the warrant before the period has expired.

11 *Issue of further warrants not prevented*

12 (7) Subsection (6) does not prevent the issue of any further warrant.

13 **17 Subsection 26(3)**

14 Omit “under his or her hand”, substitute “signed by the Minister”.

15 **18 Subsection 26(3)**

16 Omit “maintaining, using or recovering”, substitute “maintaining or  
17 using”.

18 **19 Subsection 26(4)**

19 Omit “under his or her hand”, substitute “signed by the Minister”.

20 **20 Subsection 26(4)**

21 Omit “maintaining, using or recovering”, substitute “maintaining or  
22 using”.

23 **21 Subsection 26(5)**

24 Repeal the subsection, substitute:

25 (5) The warrant must:  
26 (a) authorise the use of any force that is necessary and  
27 reasonable to do the things mentioned in subsections (3) and  
28 (4); and

- 1 (b) state whether entry is authorised to be made at any time of  
2 the day or night or during stated hours of the day or night.

3 **22 After subsection 26(6)**

4 Insert:

- 5 (6A) If a listening device is installed in accordance with the warrant, the  
6 Organisation is authorised to do any of the following:
- 7 (a) enter any premises for the purpose of recovering the listening  
8 device;
  - 9 (b) recover the listening device;
  - 10 (c) use any force that is necessary and reasonable to do either of  
11 the above;
- 12 at the following time:
- 13 (d) at any time while the warrant is in force or within 28 days  
14 after it ceases to be in force;
  - 15 (e) if the listening device is not recovered at a time mentioned in  
16 paragraph (d)—at the earliest time, after the 28 days  
17 mentioned in that paragraph, at which it is reasonably  
18 practicable to do the things concerned.

19 **23 After section 26**

20 Insert:

21 **26A Unlawful and lawful uses of tracking devices**

22 *Unlawful use of tracking devices*

- 23 (1) Subject to subsection (2), it is unlawful for an officer, employee or  
24 agent of the Organisation to use a tracking device for the purpose  
25 of tracking a person or an object. It is the duty of the  
26 Director-General to take all reasonable steps to ensure that this  
27 subsection is not contravened.

28 Note: *Tracking device*, *track* and *object* are defined in subsection (3).

29 *Lawful use of tracking device*

- 30 (2) Despite any law of a State or Territory, an officer, employee or  
31 agent of the Organisation does not act unlawfully, by using, for the

1 purposes of the Organisation, a tracking device for the purpose of  
2 tracking a person or an object if:

- 3 (a) the person, or the person using the object, consents to it  
4 being done; or  
5 (b) the officer, employee or agent of the Organisation does so in  
6 accordance with a warrant issued under section 26B or 26C.

7 *Definitions*

8 (3) In this section:

9 *apply* includes attach to or place on or in.

10 *object* means:

- 11 (a) a vehicle, aircraft, vessel or other means of transportation; or  
12 (b) clothing or any other thing worn; or  
13 (c) any other thing.

14 *track* an object or person means be aware of the movement of the  
15 object or person from place to place.

16 *tracking device* means a device or substance that, when applied to  
17 an object, enables a person to track the object or a person using or  
18 wearing the object.

19 **26B Tracking device warrants relating to persons**

20 *Issue of warrant*

21 (1) If the Director-General requests the Minister to do so, and the  
22 Minister is satisfied as mentioned in subsection (2), the Minister  
23 may issue a warrant in accordance with this section.

24 *Test for issue of warrant*

25 (2) The Minister is only to issue the warrant if he or she is satisfied  
26 that:  
27 (a) a person (the *subject*) is engaged in, or reasonably suspected  
28 by the Director-General of being engaged in or of being  
29 likely to engage in, activities prejudicial to security; and  
30 (b) the use by the Organisation of a tracking device applied to  
31 any object (a *target object*) used or worn, or likely to be used

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1                   or worn, by the subject to enable the Organisation to track  
2                   the subject will, or is likely to, assist the Organisation in  
3                   carrying out its function of obtaining intelligence relevant to  
4                   security.

5                   Note:        **Tracking device, track, object** and **apply** are defined in subsection  
6                   26A(3).

7                   *Authorisation in warrant*

- 8                   (3) The warrant:
- 9                   (a) must be signed by the Minister; and
  - 10                  (b) must authorise the Organisation, subject to any restrictions or  
11                  conditions specified in the warrant, to use a tracking device  
12                  applied to a target object for the purpose of tracking the  
13                  subject, who must be specified in the warrant; and
  - 14                  (c) may authorise the Organisation to:
    - 15                  (i) enter any premises in which a target object is or is likely  
16                  to be found, for the purpose of applying a tracking  
17                  device to the target object, or using or maintaining a  
18                  tracking device so applied; and
    - 19                  (ii) enter or alter a target object, for the purpose of  
20                  applying, using or maintaining a tracking device; and
    - 21                  (iii) apply a tracking device to a target object; and
    - 22                  (iv) maintain a tracking device applied to a target object;  
23                  and
    - 24                  (v) any other thing reasonably incidental to any of the  
25                  above.

26                  *Authorisation of entry measures*

- 27                  (4) The warrant must:
- 28                  (a) authorise the use of any force that is necessary and  
29                  reasonable to do the things specified in the warrant; and
  - 30                  (b) state whether entry is authorised to be made at any time of  
31                  the day or night or during stated hours of the day or night.

1                                    *Duration of warrant*

2                                    (5) The warrant must specify the period during which it is to remain in  
3                                    force. The period must not be more than 6 months, although the  
4                                    Minister may revoke the warrant before the period has expired.

5                                    *Issue of further warrants not prevented*

6                                    (6) Subsection (5) does not prevent the issue of any further warrant.

7                                    *Tracking device may be recovered*

8                                    (7) If a tracking device is applied to a target object in accordance with  
9                                    the warrant, the Organisation is authorised to do any of the  
10                                   following:

- 11                                    (a) enter any premises in which the target object is or is likely to  
12                                    be found, for the purpose of recovering the tracking device;
- 13                                    (b) enter or alter the target object for the purpose of recovering  
14                                    the tracking device;
- 15                                    (c) recover the tracking device;
- 16                                    (d) use any force that is necessary and reasonable to do any of  
17                                    the above;

18                                    at the following time:

- 19                                    (e) at any time while the warrant is in force or within 28 days  
20                                    after it ceases to be in force;
- 21                                    (f) if the tracking device is not recovered at a time mentioned in  
22                                    paragraph (e)—at the earliest time, after the 28 days  
23                                    mentioned in that paragraph, at which it is reasonably  
24                                    practicable to do the things concerned.

25                                    *Interpretation*

26                                    (8) Expressions used in this section that are also used in section 26A  
27                                    have the same meanings as in that section.

1       **26C Tracking device warrants relating to objects**

2                       *Issue of warrant*

- 3               (1) If the Director-General requests the Minister to do so, and the  
4               Minister is satisfied as mentioned in subsection (2), the Minister  
5               may issue a warrant in accordance with this section.

6                       *Test for issue of warrant*

- 7               (2) The Minister is only to issue the warrant if he or she is satisfied  
8               that:
- 9               (a) an object (the **target object**) is used or worn, or likely to be  
10              used or worn by a person (whether or not his or her identity  
11              is known) engaged in or reasonably suspected by the  
12              Director-General of being engaged in or of being likely to  
13              engage in, activities prejudicial to security; and
  - 14              (b) the use by the Organisation of a tracking device applied to  
15              the target object to enable the Organisation to track the target  
16              object will, or is likely to, assist the Organisation in carrying  
17              out its function of obtaining intelligence relevant to security.

18               Note:       **Tracking device, track, object** and **apply** are defined in subsection  
19               26A(3).

20                      *Authorisation in warrant*

- 21              (3) The warrant:
- 22              (a) must be signed by the Minister; and
  - 23              (b) must authorise the Organisation, subject to any restrictions or  
24              conditions specified in the warrant, to use a tracking device  
25              applied to the target object for the purpose of tracking the  
26              target object which must be specified in the warrant; and
  - 27              (c) may authorise the Organisation to:
    - 28              (i) enter any premises specified in the warrant in which the  
29              target object is, or is likely to be, found, for the purpose  
30              of applying a tracking device to the target object, or  
31              maintaining or using a tracking device so applied; and
    - 32              (ii) enter or alter the target object, for the purpose of  
33              applying, maintaining or using a tracking device; and
    - 34              (iii) apply a tracking device to the target object; and

- 1 (iv) maintain a tracking device applied to the target object;  
2 and  
3 (v) any other thing reasonably incidental to any of the  
4 above.

5 *Authorisation of entry measures*

- 6 (4) The warrant must:  
7 (a) authorise the use of any force that is necessary and  
8 reasonable to do the things specified in the warrant; and  
9 (b) state whether entry is authorised to be made at any time of  
10 the day or night or during stated hours of the day or night.

11 *Duration of warrant*

- 12 (5) The warrant must specify the period during which it is to remain in  
13 force. The period must not be more than 6 months, although the  
14 Minister may revoke the warrant before the period has expired.

15 *Issue of further warrants not prevented*

- 16 (6) Subsection (5) does not prevent the issue of any further warrant.

17 *Tracking device may be recovered*

- 18 (7) If a tracking device is applied to a target object in accordance with  
19 the warrant, the Organisation is authorised to do any of the  
20 following:  
21 (a) enter any premises in which the target object is or is likely to  
22 be found, for the purpose of recovering the tracking device;  
23 (b) enter or alter the target object for the purpose of recovering  
24 the tracking device;  
25 (c) recover the tracking device;  
26 (d) use any force that is necessary and reasonable to do any of  
27 the above;  
28 at the following time:  
29 (e) at any time while the warrant is in force or within 28 days  
30 after it ceases to be in force;  
31 (f) if the tracking device is not recovered at a time mentioned in  
32 paragraph (e)—at the earliest time, after the 28 days

1                                    mentioned in that paragraph, at which it is reasonably  
2                                    practicable to do the things concerned.

3                                    *Interpretation*

4                                    (8) Expressions used in this section that are also used in section 26A  
5                                    have the same meanings as in that section.

6                                    **24 After section 27**

7                                    Insert:

8                                    **27AA Inspection of delivery service articles**

9                                    *Unlawful access to delivery service articles*

10                                  (1) It is unlawful for:

11                                  (a) an officer, employee or agent of the Organisation, for the  
12                                  purposes of the Organisation, to seek from a delivery service  
13                                  provider or from an employee or agent of a delivery service  
14                                  provider; or

15                                  (b) a delivery service provider or an employee or agent of a  
16                                  delivery service provider to give an officer, employee or  
17                                  agent of the Organisation, for the purposes of the  
18                                  Organisation;

19                                  access to:

20                                  (c) an article that is being delivered by the delivery service  
21                                  provider; or

22                                  (d) information concerning the contents or cover of any such  
23                                  article;

24                                  except in accordance with, or for the purposes of, a warrant under  
25                                  this Division. It is the duty of the Director-General to take all  
26                                  reasonable steps to ensure that this subsection is not contravened.

27                                  Note:     *Delivery service provider, agent* and *article* are defined in subsection  
28                                  (12).

29                                  *Issue of delivery services warrant*

30                                  (2) If the Director-General requests the Minister to do so, and the  
31                                  Minister is satisfied as mentioned in subsection (3) or (6), the  
32                                  Minister may issue a warrant in accordance with this section.

1                                    *Test 1 for issue of warrant*

- 2                    (3) The Minister may issue a warrant if he or she is satisfied that:
- 3                            (a) a person (the *subject*) is engaged in or is reasonably
- 4    suspected by the Director-General of being engaged in, or of
- 5    being likely to engage in, activities prejudicial to security;
- 6    and
- 7                            (b) access by the Organisation to articles sent by or on behalf of,
- 8    addressed to or intended to be received by, the subject while
- 9    the articles are being delivered by a delivery service
- 10    provider, will, or is likely to, assist the Organisation in
- 11    carrying out its function of obtaining intelligence relevant to
- 12    security.

13                                    *Authorisation in warrant*

- 14                    (4) The warrant must be signed by the Minister and must authorise the
- 15    Organisation to do specified things, subject to any restrictions or
- 16    conditions specified in the warrant, in relation to articles that:
- 17    (a) are being delivered by the delivery service provider; and
- 18    (b) in respect of which any of the following are satisfied:
- 19    (i) the articles have been sent by or on behalf of the
- 20    subject, who must be specified in the warrant, or
- 21    addressed to the subject; or
- 22    (ii) the articles are reasonably suspected, by a person
- 23    authorised to exercise the authority of the Organisation
- 24    under the warrant, of having been so sent or addressed;
- 25    or
- 26    (iii) the articles are intended to be received by the subject,
- 27    who must be specified in the warrant, or are reasonably
- 28    suspected, by a person authorised to exercise the
- 29    authority of the Organisation under the warrant, of
- 30    being intended to be received by the subject.

31                                    *Things that may be specified for a warrant issued under subsection*

32                                    (3)

- 33                    (5) The things that may be specified are any of the following that the
- 34    Minister considers appropriate in the circumstances:
- 35    (a) inspecting or making copies of the articles or the covers of
- 36    the articles;
-

- 1 (b) opening the articles;  
2 (c) inspecting and making copies of the contents of the articles;  
3 (d) any other thing reasonably incidental to any of the above.

4 *Test 2 for issue of warrant*

- 5 (6) The Minister may issue a warrant if he or she is satisfied that:  
6 (a) some or all of the articles that are being, or are likely to be,  
7 sent by a delivery service provider to an address (the *subject*  
8 *address*) are, or will be intended to be, received by a person  
9 (the *subject*) (whether of known identity or not) engaged in,  
10 or reasonably suspected by the Director-General of being  
11 engaged in, or of being likely to engage in, activities  
12 prejudicial to security; and  
13 (b) access by the Organisation to articles sent to, or intended to  
14 be received by, the subject while the articles are being  
15 delivered by a delivery service provider will, or is likely to,  
16 assist the Organisation in carrying out its function of  
17 obtaining intelligence relevant to security.

18 *Authorisation in warrant*

- 19 (7) The warrant must be signed by the Minister and must authorise the  
20 Organisation to do specified things, subject to any restrictions or  
21 conditions specified in the warrant, in relation to articles that:  
22 (a) are being delivered by the delivery service provider; and  
23 (b) are addressed to the subject address, which must be specified  
24 in the warrant; and  
25 (c) appear on their face to be, or are reasonably suspected by a  
26 person authorised to exercise the authority of the  
27 Organisation under the warrant to be, intended to be received  
28 by the subject.

29 *Things that may be specified for warrant issued under subsection*  
30 *(6)*

- 31 (8) The things that may be specified are any of the following that the  
32 Minister considers appropriate in the circumstances:  
33 (a) inspecting or making copies of any of the articles or the  
34 covers of the articles;

- 1 (b) opening any of the articles;  
2 (c) inspecting and making copies of the contents of any of the  
3 articles;  
4 (d) any other thing reasonably incidental to any of the above.

5 *Duration of warrant*

- 6 (9) A warrant issued under this section must specify the period during  
7 which it is to remain in force. The period must not be more than 90  
8 days, although the Minister may revoke the warrant before the  
9 period has expired.

10 *Issue of further warrants not prevented*

- 11 (10) Subsection (9) does not prevent the issue of any further warrant.

12 *Definitions*

- 13 (11) To avoid doubt, the expression *deliver* an article includes any thing  
14 done by the deliverer, for the purpose of delivering the article,  
15 from the time when the article is given to the deliverer by the  
16 sender until it is given by the deliverer to the recipient.

- 17 (12) In this section:

18 *agent*, in relation to a delivery service provider, includes:

- 19 (a) any person performing services for the delivery service  
20 provider otherwise than under a contract of service; and  
21 (b) an employee of the person mentioned in paragraph (a).

22 *article* means any object reasonably capable of being sent through  
23 the post.

24 *delivery service provider* means a person whose business is or  
25 includes delivering articles.

26 **25 Paragraph 27A(1)(a)**

27 Omit “or a person”, substitute “, a person, a computer or a thing”.

28 **26 Paragraph 27A(1)(a)**

29 Omit “25(1), 26(3) or (4) or 27(2) or (3)”, substitute “25(4) or (5),  
30 25A(4), 26(3) or (4), 26B(3), 26C(3), 27(2) or (3) or 27AA(5) or (8)”.

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1     **27 Subsection 27A(1)**

2             Omit “or that person”, substitute “, that person, that computer or those  
3             things”.

4     **28 Subsection 27A(2)**

5             Repeal the subsection, substitute:

6             (2) The warrant must:

7                 (a) authorise the use of any force that is necessary and  
8                 reasonable to do the things mentioned in subsection (1); and

9                 (b) state whether entry is authorised to be made at any time of  
10                 the day or night or during stated hours of the day or night.

11     **29 Paragraph 27A(3)(a)**

12             Omit “25(1)—7 days”, substitute “25(4) or (5)—28 days”.

13     **30 Paragraph 27A(3)(b)**

14             Omit “26(3) or (4)”, substitute “25A(4), 26(3) or (4), 26B(3) or  
15             26C(3)”.

16     **31 Paragraph 27A(3)(c)**

17             After “27(2) or (3)”, insert “or 27AA(5) or (8)”.

18     **32 After subsection 27A(3)**

19             Insert:

20             (3A) If a listening device is installed in accordance with a warrant under  
21             this section authorising the doing of acts referred to in subsection  
22             26(3) or (4), the Organisation is authorised to do any of the  
23             following:

24                 (a) enter any premises for the purpose of recovering the listening  
25                 device;

26                 (b) recover the listening device;

27                 (c) use any force that is necessary and reasonable to do either of  
28                 the above;

29             at the following time:

30                 (d) at any time while the warrant is in force or within 28 days  
31                 after it ceases to be in force;

1 (e) if the listening device is not recovered at a time mentioned in  
2 paragraph (d)—at the earliest time, after the 28 days  
3 mentioned in that paragraph, at which it is reasonably  
4 practicable to do the things concerned.

5 (3B) If a tracking device is applied to a target object in accordance with  
6 a warrant under this section authorising the doing of acts referred  
7 to in subsection 26B(3) or 26C(3), the Organisation is authorised  
8 to do any of the following:

- 9 (a) enter any premises in which the target object is or is likely to  
10 be found, for the purpose of recovering the tracking device;  
11 (b) enter or alter the target object for the purpose of recovering  
12 the tracking device;  
13 (c) recover the tracking device;  
14 (d) use any force that is necessary and reasonable to do any of  
15 the above;

16 at the following time:

- 17 (e) at any time while the warrant is in force or within 28 days  
18 after it ceases to be in force;  
19 (f) if the tracking device is not recovered at a time mentioned in  
20 paragraph (e)—at the earliest time, after the 28 days  
21 mentioned in that paragraph, at which it is reasonably  
22 practicable to do the things concerned.

### 23 **33 After section 27A**

24 Insert:

### 25 **27B Performance of other functions under paragraph 17(1)(e)**

26 If:

- 27 (a) the Director-General gives a notice in writing to the Minister  
28 requesting the Minister to authorise the Organisation to  
29 obtain foreign intelligence in relation to a matter specified in  
30 the notice; and  
31 (b) the Minister is satisfied, on the basis of advice received from  
32 the relevant Minister, that the collection of foreign  
33 intelligence relating to that matter is important in relation to  
34 the defence of the Commonwealth or to the conduct of the  
35 Commonwealth's international affairs;

1                   the Minister may, by writing signed by the Minister, authorise the  
2                   Organisation to obtain the intelligence in relation to the matter.

3                   **34 Paragraph 29(1)(a)**

4                   Omit “section 26”, substitute “section 25, 25A, 26, 26B, 26C, 27 or  
5                   27AA”.

6                   **35 Subsection 29(1)**

7                   Omit “under his or her hand”, substitute “signed by the  
8                   Director-General”.

9                   **36 Section 30**

10                  After “device”, insert “or tracking device”.

11                  **37 Section 35**

12                  Insert:

13                                 *year 2000 Games matters* means any matters relating to the  
14                                 organisation or conduct of any sporting or other event, any  
15                                 ceremony, any meeting or any other activity, held or proposed to  
16                                 be held (whether or not in Sydney), as part of or in connection with  
17                                 the Games of the XXVII Olympiad in Sydney in the year 2000 or  
18                                 the Games of the XIth Paralympiad in Sydney in the year 2000.

19                  **38 Paragraph 36(1)(b)**

20                  Omit “subsection 56(1)”, substitute “subsection 202(1)”.

21                  **39 Subsection 38(1)**

22                  Omit “, the Commonwealth agency”, substitute “or a State or an  
23                  authority of a State, the Commonwealth agency, the State or the  
24                  authority of the State”.

25                  **40 Subsection 38(2)**

26                  Omit “under his or her hand”, substitute “signed by the  
27                  Attorney-General”.

28                  **41 Subsection 40(1)**

29                  Repeal the subsection, substitute:

- 1 (1) If any prescribed administrative action in respect of a person by a  
2 State or an authority of a State would affect security in connection  
3 with matters within the functions and responsibilities of a  
4 Commonwealth agency, it is within the functions of the  
5 Organisation:  
6 (a) in any case—to furnish a security assessment in respect of  
7 that person to the Commonwealth agency, for the purpose of  
8 its transmission to the State or the authority of the State for  
9 use in considering that prescribed administrative action; or  
10 (b) if the prescribed administrative action would affect security  
11 in connection with year 2000 Games matters (see section  
12 35)—to furnish, before the end of 31 December 2000, a  
13 security assessment in respect of that person to the State or  
14 the authority of a State for use in considering that prescribed  
15 administrative action.

16 **42 Paragraph 40(2)(a)**

17 Before “communicate”, insert “subject to paragraph (1)(b),”.

18 **43 After subsection 90(2)**

19 Insert:

- 20 (2A) The regulations may make provision for the establishment of a  
21 body, or for a person, to review actions of the Organisation  
22 affecting persons who are or have been officers or temporary or  
23 casual employees, and for the immunity from civil proceedings of  
24 any such body or person in relation to their review of such actions.

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2 **Part 2—Application and transitional provisions**

3 **44 Application of amendments relating to warrants issued**  
4 **after commencement of this item**

5 The amendments relating to warrants made by this Schedule apply to  
6 any warrant issued after the commencement of this item where the  
7 request by the Director-General for the issue of the warrant is also made  
8 after the commencement of this item.

9 **45 Transitional provisions relating to Acting Director-General**  
10 **appointed before commencement of this item**

- 11 (1) If, when this item commences, a person is acting as Director-General  
12 under an instrument of appointment made by the Governor-General  
13 before this item commenced, the person continues to act in accordance  
14 with that instrument in spite of amendments made by this Schedule.  
15 However, the instrument ceases to have effect when the person ceases  
16 to act.
- 17 (2) In no other circumstance does an instrument of appointment made  
18 before the commencement of this Schedule have affect after the  
19 Schedule commences.

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## **Schedule 2—Penalty provisions**

### **Part 1—Amendments**

#### ***Australian Security Intelligence Organization Act 1979***

##### **1 Subsection 18(2) (penalty)**

Repeal the penalty, substitute:

Penalty: Imprisonment for 2 years.

##### **2 Section 33 (penalty)**

Repeal the penalty, substitute:

Penalty: 6 months imprisonment.

##### **3 Subsection 81(1) (penalty)**

Repeal the penalty, substitute:

Penalty: Imprisonment for 2 years.

##### **4 Subsection 92(1) (penalty)**

Repeal the penalty, substitute:

Penalty: Imprisonment for one year.

##### **5 Subsection 92(1A) (penalty)**

Repeal the penalty, substitute:

Penalty: Imprisonment for one year.

##### **6 Subsection 92G(1) (penalty)**

Repeal the penalty, substitute:

Penalty: Imprisonment for 2 years.

##### **7 Subsection 92M(1) (penalty)**

Repeal the penalty, substitute:

Penalty: Imprisonment for 6 months.

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1 **8 Subsection 92M(2) (penalty)**

2 Repeal the penalty, substitute:

3 Penalty: Imprisonment for 6 months.

4 **9 Subsection 92M(3) (penalty)**

5 Repeal the penalty, substitute:

6 Penalty: Imprisonment for 6 months.

7 **10 Subsection 92M(4) (penalty)**

8 Repeal the penalty, substitute:

9 Penalty: Imprisonment for 2 years.

10 **11 Section 92Q (penalty)**

11 Repeal the penalty, substitute:

12 Penalty: Imprisonment for 5 years.

13 **12 Subsection 92S(1) (penalty)**

14 Repeal the penalty, substitute:

15 Penalty: Imprisonment for 2 years.

16 **13 Subsections 93(1), (2), (3) and (4)**

17 Repeal the subsections.

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2 **Part 2—Application**

3 **14 Application**

4           The amendments made by this Schedule apply to offences committed  
5           after the commencement of the Schedule.



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2 **Schedule 3—The spelling of “Organization”**

3 **Part 1—Amendment of various Acts**

4 **1 Amendment of Acts**

5 The specified provisions of the following Acts are amended by:

- 6 (a) omitting “Organization” (wherever occurring) and  
7 substituting “Organisation”;
- 8 (b) omitting “*Organization*” (wherever occurring) and  
9 substituting “*Organisation*”;
- 10 (c) omitting “Organization’s” (wherever occurring) and  
11 substituting “Organisation’s”.

12 ***Acts Interpretation Act 1901***

13 **2 Subsection 34C(8)**

14 ***Administrative Appeals Tribunal Act 1975***

15 **3 Subsection 3(1) (definition of *security assessment or***  
16 ***assessment*)**

17 **4 Subsections 19(3B) and (6)**

18 **5 Subsections 21AA(1) and (3)**

19 **6 Subsection 27(1)**

20 **7 Subsections 27AA(1) and (2)**

21 Note: The heading to section 27AA is altered by omitting “**Organization**” and substituting  
22 “**Organisation**”.

23 **8 Paragraphs 29(1)(ca) and (cb)**

24 **9 Subsection 38A(1)**

25 **10 Subsections 39A(8) and (15)**

26 **11 Subsection 39B(10)**

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**Schedule 3** The spelling of “Organization”

**Part 1** Amendment of various Acts

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1 **12 Subsection 43(1A)**

2 **13 Subsections 43AAA(3) and (7)**

3 **14 Subsection 66(4) (note)**

4 **15 Paragraph 69B(1)(a)**

5 *Administrative Decisions (Judicial Review) Act 1977*

6 **16 Paragraph (d) of Schedule 1 (reference to *Australian***  
7 ***Security Intelligence Organization Act 1979*)**

8 *Archives Act 1983*

9 **17 Paragraph 29(8)(a)**

10 *Australian Postal Corporation Act 1989*

11 **18 Section 90E (definition of ASIO)**

12 **19 Section 90E (definition of ASIO Act)**

13 *Australian Radiation Protection and Nuclear Safety Act 1998*

14 **20 Paragraph 8(2)(b)**

15 Note: For the commencement of this item, see subsection 2(3).

16 *Australian Security Intelligence Organization Act 1979*

17 **21 The whole of the Act**

18 Note: The headings to sections 6, 8, 17, 20, 39, 92, 92B and 92J are altered by omitting  
19 “Organization” and substituting “Organisation”.

20 *Crimes Act 1914*

21 **22 Section 85ZL (paragraph (a) of the definition of**  
22 ***intelligence or security agency*)**

1 **23 Section 85ZL (definition of *security*)**

2 ***Customs Act 1901***

3 **24 Paragraph 219F(2)(b)**

4 ***Disability Discrimination Act 1992***

5 **25 Subsection 4(1) (paragraph (e) of the definition of**  
6 ***Commonwealth employee*)**

7 ***Freedom of Information Act 1982***

8 **26 Subsection 7(2A)**

9 **27 Part 1 of Schedule 2 (reference to Australian Security**  
10 ***Intelligence Organization*)**

11 **28 Schedule 3 (reference to *Australian Security Intelligence***  
12 ***Organization Act 1979*)**

13 ***Human Rights and Equal Opportunity Commission Act 1986***

14 **29 Subsection 11(4)**

15 Note: This item might not commence at all: see subsection 2(4).

16 ***Human Rights and Responsibilities Commission Act 1986***

17 **30 Subsection 11(4)**

18 Note: This item might not commence at all: see subsection 2(5).

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

20 **31 Subsection 3(1) (definition of *adverse security***  
21 ***assessment*)**

22 **32 Subsection 3(1) (definition of *ASIO*)**

1 **33 Subsection 3(1) (definition of *Commonwealth agency*)**

2 **34 Subsection 3(1) (definition of *qualified security***  
3 ***assessment*)**

4 **35 Subsection 3(1) (definition of *security*)**

5 **36 Paragraph 8(8)(c)**

6 **37 Paragraph 32A(1)(a)**

7 ***Legislative Instruments Act 1999***

8 **38 Schedule 1, item 3**

9 Note: For the commencement of this item, see subsection 2(6).

10 ***Merit Protection (Australian Government Employees) Act***  
11 ***1984***

12 **39 Subparagraph 85(2)(k)(v)**

13 ***Migration Act 1958***

14 **40 Paragraphs 202(1)(b), (2)(b) and (3)(b)**

15 **41 Subsection 202(4)**

16 **42 Subsection 202(6) (definition of *adverse security***  
17 ***assessment, security assessment and Tribunal*)**

18 **43 Subsection 202(6) (definition of *Organization*)**

19 ***National Crime Authority Act 1984***

20 **44 Paragraph 19A(6)(b)**

21 **45 Subsection 59(11)**

1 **46 Schedule 1 (reference to *Australian Security Intelligence***  
2 ***Organization Act 1979*)**

3 ***Occupational Health and Safety (Commonwealth***  
4 ***Employment) Act 1991***

5 **47 Paragraph 6(2)(b)**

6 **48 Subsection 6(3)**

7 ***Privacy Act 1988***

8 **49 Subsection 6(1) (paragraph (a) of the definition of**  
9 ***intelligence agency*)**

10 ***Public Service Act 1922***

11 **50 Paragraph 22B(14)(e)**

12 **51 Paragraph 22C(13)(e)**

13 **52 Paragraph 87(2)(g)**

14 **53 Paragraph 87J(2)(e)**

15 ***Remuneration and Allowances Act 1990***

16 **54 Part 3 of Schedule 2 (reference to *Australian Security***  
17 ***Intelligence Organization*)**

18 **55 Schedule 4 (reference to *Australian Security Intelligence***  
19 ***Organization*)**

20 ***Remuneration Tribunal Act 1973***

21 **56 Paragraph 3(4)(m)**

22 ***Sex Discrimination Act 1984***

1 **57 Subsection 4(1) (paragraph (e) of the definition of**  
2 ***Commonwealth employee*)**

3 ***Telecommunications Act 1997***

4 **58 Section 7 (paragraph (g) of the definition of *agency*)**

5 **59 Paragraph 46(b)**

6 **60 Paragraph 91(b)**

7 **61 Section 283**

8 ***Telecommunications (Interception) Act 1979***

9 **62 Section 2**

10 **63 Subsection 5(1) (definition of *activities prejudicial to***  
11 ***security*)**

12 **64 Subsection 5(1) (definition of *Deputy Director-General of***  
13 ***Security*)**

14 **65 Subsection 5(1) (definition of *foreign intelligence*)**

15 **66 Subsection 5(1) (definition of *security*)**

16 **67 Subsection 5(1) (definition of *the Director-General of***  
17 ***Security*)**

18 **68 Subsection 5(1) (definition of *the Organization*)**

19 **69 Paragraph 7(2)(ac)**

20 **70 Subsection 7(3)**

21 **71 Paragraph 9(1)(b)**

22 Note: The heading to section 9 is altered by omitting “**Organization**” and substituting  
23 “**Organisation**”.

1 **72 Subparagraph 10(1)(d)(ii)**

2 Note: The heading to section 10 is altered by omitting “**Organization**” and substituting  
3 “**Organisation**”.

4 **73 Subsection 11A(9)**

5 **74 Subsection 12(1)**

6 Note: The heading to section 12 is altered by omitting “**Organization**” and substituting  
7 “**Organisation**”.

8 **75 Paragraphs 14(b) and (c)**

9 Note: The heading to section 14 is altered by omitting “**Organization**” and substituting  
10 “**Organisation**”.

11 **76 Subsection 15(6)**

12 **77 Section 17**

13 **78 Paragraphs 18(4)(a) and (b)**

14 **79 Section 64**

15 Note: The heading to section 64 is altered by omitting “**Organization’s**” and substituting  
16 “**Organisation’s**”.

17 **80 Subsection 65(1)**

18 Note: The heading to section 65 is altered by omitting “**Organization**” and substituting  
19 “**Organisation**”.

1

2 **Part 2—Other amendments**

3 *Telecommunications (Interception) Act 1979*

4 **81 Part III (heading)**

5 Repeal the heading, substitute:

6 **Part III—Warrants authorising the Organisation to**  
7 **intercept telecommunications**



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1  
2 **Schedule 4—Financial Transaction Reports**  
3 **Act 1988**  
4

5 **1 At the end of Part IV**

6 Add:

7 **27AA Access by ASIO to FTR information**

- 8 (1) Despite anything in section 25, the Director may, in writing,  
9 authorise ASIO (see subsection (8)) to have access to FTR  
10 information for the purpose of performing its functions.
- 11 (2) An authorisation under subsection (1) must state the FTR  
12 information, or the class of FTR information, to which ASIO is to  
13 have access.
- 14 (3) If ASIO is authorised under subsection (1) to have access to FTR  
15 information, any ASIO officer (see subsection (8)) authorised by  
16 the Director-General of Security (see subsection (8)) is entitled to  
17 access to that FTR information in accordance with the  
18 authorisation.
- 19 (4) If a person who is an ASIO officer obtains FTR information under  
20 this section:
- 21 (a) the person must not, while he or she is an ASIO officer,  
22 divulge or communicate the information except to:
- 23 (i) a police officer (see subsection (8)) for the purposes of,  
24 or in connection with, the performance of that officer's  
25 duties; or
- 26 (ii) an IGIS officer (see subsection (8)) for the purposes of,  
27 or in connection with, the performance of that officer's  
28 duties in relation to ASIO or employees of ASIO; or
- 29 (iii) another ASIO officer for the purposes of, or in  
30 connection with, the performance of that officer's  
31 duties; and
- 32 (b) the person must not, when he or she is no longer an ASIO  
33 officer, make a record of the information, or divulge or  
34 communicate the information, in any circumstances.

- 1 (5) If a person who is an IGIS officer obtains FTR information under  
2 this section:
- 3 (a) the person must not, while he or she is an IGIS officer,  
4 divulge or communicate the information except:
- 5 (i) to another IGIS officer for the purposes of, or in  
6 connection with, the performance of that officer's duties  
7 in relation to ASIO or employees of ASIO; or
- 8 (ii) to the Director-General of Security in a draft report  
9 under section 21 of the *Inspector-General of*  
10 *Intelligence and Security Act 1986* (the *IGIS Act*) in  
11 relation to ASIO or employees of ASIO; or
- 12 (iii) in a manner that does not identify, and is not reasonably  
13 capable of being used to identify, a person to whom the  
14 information relates, in a report under section 22, or a  
15 written response to a complainant under section 23, of  
16 the IGIS Act in relation to ASIO or employees of ASIO;  
17 or
- 18 (iv) to the Director-General of Security in a report, in  
19 relation to ASIO or employees of ASIO, under section  
20 25A of the IGIS Act; or
- 21 (v) in a manner that does not identify, and is not reasonably  
22 capable of being used to identify, a person to whom the  
23 information relates, in a report to the responsible  
24 Minister, in relation to ASIO or employees of ASIO,  
25 under section 25A of the IGIS Act; and
- 26 (b) the person must not, when he or she is no longer an IGIS  
27 officer, make a record of the information, or divulge or  
28 communicate the information, in any circumstances.
- 29 (6) A person who is or has been an ASIO officer or IGIS officer and  
30 who obtained FTR information under this section must not be  
31 required:
- 32 (a) to produce in a court any document containing FTR  
33 information; or
- 34 (b) to divulge or communicate to any court any FTR  
35 information.
- 36 (7) If a person who is or has been an ASIO officer or an IGIS officer  
37 makes a record of, or divulges or communicates, information in  
38 contravention of this section, the person is guilty of an offence
-

1 against this section punishable, upon conviction, by imprisonment  
2 for not more than 2 years.

3 Note 1: Subsection 4B(2) of the *Crimes Act 1914* allows a court to impose in  
4 respect of an offence an appropriate fine instead of, or in addition to, a  
5 term of imprisonment. The maximum fine that a court can impose on  
6 an individual is worked out by multiplying the maximum term of  
7 imprisonment (in months) by 5, and then multiplying the resulting  
8 number by the amount of a penalty unit. The amount of a penalty unit  
9 is stated in section 4AA.

10 Note 2: Subsections 27(6) to (13) deal with the use by a police officer of FTR  
11 information obtained from ASIO.

12 (8) In this section:

13 **ASIO** means the Australian Security Intelligence Organisation.

14 **ASIO officer** means:

- 15 (a) the Director-General of Security; or  
16 (b) a person employed under paragraph 84(1)(a) or (b) of the  
17 *Australian Security Intelligence Organisation Act 1979*.

18 **Director-General of Security** means the Director-General of  
19 Security holding office under the *Australian Security Intelligence*  
20 *Organisation Act 1979*.

21 **IGIS officer** means:

- 22 (a) the Inspector-General of Intelligence and Security holding  
23 office under the *Inspector-General of Intelligence and*  
24 *Security Act 1986*; or  
25 (b) a member of staff appointed to assist the Inspector-General  
26 of Intelligence and Security under that Act.

27 **police officer** means:

- 28 (a) a Commissioner of the Australian Federal Police; or  
29 (b) a member or special member of the Australian Federal  
30 Police; or  
31 (c) an officer, employee or other person under the control of the  
32 Commissioner of the Australian Federal Police.

33 **responsible Minister** means the Minister responsible for  
34 administering the *Australian Security Intelligence Organisation*  
35 *Act 1979*.

- 1 (9) Without prejudice to its effect apart from this subsection, this  
2 section also has effect as if a reference to a *police officer* included  
3 a reference to:  
4 (a) the commanding officer of the Police Force of a State; and  
5 (b) a member of a Police Force of a State; and  
6 (c) an officer, employee or other person under the control of the  
7 commanding officer of the Police Force of a State.

1  
2 **Schedule 5—Inspector-General of Intelligence**  
3 **and Security Act 1986**  
4

5 **1 At the end of Division 1 of Part II**

6 Add:

7 **9A Inspection functions of Inspector-General**

8 The functions of the Inspector-General include conducting, at such  
9 times as the Inspector-General determines in consultation with the  
10 head of the relevant agency, such other inspections of the agency  
11 as the Inspector-General considers appropriate for the purpose of  
12 giving effect to the objects of this Act.

13 Note 1: The heading to section 8 is replaced by the heading “**Inquiry functions of**  
14 **Inspector-General**”.

15 Note 2: The heading to section 9 is replaced by the heading “**Additional inquiry functions of**  
16 **Inspector-General**”.

17 **2 Subsection 22(1)**

18 Omit all the words after “copy of the report”, substitute “to the head of  
19 the agency”.

20 **3 At the end of section 22**

21 Add:

- 22 (3) If the report includes information that was acquired by the  
23 Commissioner of Taxation under the provisions of a tax law  
24 (within the meaning of section 3E of the *Taxation Administration*  
25 *Act 1953*), the Inspector-General must prepare another version of  
26 the report that does not disclose the tax information.

27 Note: Section 3EC of the *Taxation Administration Act 1952* permits the  
28 Inspector-General to disclose the information to the Director-General  
29 of Security in the report under subsection (1).

- 30 (4) The Inspector-General must give a copy of:  
31 (a) if subsection (3) applies—the version of the report  
32 mentioned in that subsection; or  
33 (b) in any other case—the report mentioned in subsection (1);  
34 to:
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- 1 (c) the responsible Minister; and  
2 (d) if the inquiry was conducted as a result of a request made by  
3 the Prime Minister under section 9—the Prime Minister.

4 **4 Subsection 23(2)**

5 Omit “responsible Minister”, substitute “head of the relevant agency”.

6 **5 At the end of section 23**

7 Add:

- 8 (3) The Inspector-General must give a copy of the response to the  
9 responsible Minister.

10 **6 At the end of Part II**

11 Add:

12 **25A Reports relating to other inspections**

13 If the Inspector-General completes an inspection of an agency  
14 under section 9A, the Inspector-General may report on the  
15 inspection to the responsible Minister or the head of the relevant  
16 agency.

17 Note: The Inspector-General may only disclose tax information and  
18 financial transaction reports information as permitted under section  
19 3EC of the *Taxation Administration Act 1953* and section 27AA of the  
20 *Financial Transaction Reports Act 1988*.

21 **7 Subsection 34(1)**

22 Omit “A person”, substitute “Subject to subsection (1A), a person”.

23 **8 After subsection 34(1)**

24 Insert:

- 25 (1A) Subsection (1) does not apply if the Inspector-General:  
26 (a) believed on reasonable grounds that the making of the  
27 record, or the divulging, communicating or use of the  
28 information (the *conduct*) by the person mentioned in  
29 subsection (1) is necessary for the purpose of preserving the  
30 well-being or safety of another person; and

1 (b) authorised the person mentioned in subsection (1) to engage  
2 in the conduct for that purpose.

3 **9 After subsection 35(2)**

4 Insert:

5 (2A) The Inspector-General must include in a report prepared under  
6 subsection (1) the Inspector-General's comments on any inspection  
7 conducted under section 9A during the year to which the report  
8 relates.

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# Schedule 6—Taxation Administration Act 1953

## 1 Section 2

Insert:

*ASIO* means the Australian Security Intelligence Organisation.

## 2 Section 2

Insert:

*ASIO officer* means:

- (a) the Director-General of Security; or
- (b) a person employed under paragraph 84(1)(a) or (b) of the *Australian Security Intelligence Organisation Act 1979*.

## 3 Section 2

Insert:

*authorised ASIO officer* means:

- (a) the Director-General of Security; or
- (b) any other ASIO officer who has been authorised in writing by the Director-General of Security to receive particular tax information.

## 4 Section 2

Insert:

*Director-General of Security* means the Director-General of Security holding office under the *Australian Security Intelligence Organisation Act 1979*.

## 5 Section 2

Insert:

*IGIS officer* means:

- (a) the Inspector-General; or
- (b) a member of staff appointed to assist the Inspector-General under the *Inspector-General of Intelligence and Security Act 1986*.



1 **5A Section 2**

2 Insert:

3 *Inspector-General* means the Inspector-General of Intelligence  
4 and Security holding office under the *Inspector-General of*  
5 *Intelligence and Security Act 1986*.

6 **6 At the end of subsection 3B(1AA)**

7 Add:

8 ; and (d) set out, in relation to ASIO:

- 9 (i) the number of occasions (if any) during the year on  
10 which the Commissioner was requested by, or on behalf  
11 of, the Director-General of Security to disclose  
12 information under subsection 3EA(1) to an authorised  
13 ASIO officer; and  
14 (ii) the number of occasions (if any) during the year on  
15 which information was disclosed under subsection  
16 3EA(1) to an authorised ASIO officer.

17 **7 Subsection 3E(2)**

18 Omit “authorised law enforcement agency officer, or to an authorised  
19 Royal Commission officer, under subsection (1)”, substitute “officer  
20 under subsection (1) of this section or paragraph 3EA(3)(e)”.

21 Note: The heading to section 3E is replaced by the heading “**Use of tax information by law**  
22 **enforcement agencies and eligible Royal Commissions etc.**”.

23 **8 Subsection 3E(3)**

24 After “subsection (1) or (2)”, insert “of this section or paragraph  
25 3EA(3)(e)”.

26 **9 Subsection 3E(4)**

27 Omit “authorised law enforcement agency officer, or to an authorised  
28 Royal Commission officer, under subsection (1)”, substitute “officer  
29 under subsection (1) of this section or paragraph 3EA(3)(e)”.

30 **10 After section 3E**

31 Insert:

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1       **3EA Use by ASIO officers of tax information**

2               (1) Despite any taxation secrecy provision, the Commissioner may  
3               disclose tax information to an authorised ASIO officer if the  
4               Commissioner is satisfied that the information is relevant to the  
5               performance of ASIO's functions under subsection 17(1) of the  
6               *Australian Security Intelligence Organisation Act 1979 (ASIO's*  
7               *17(1) functions*).

8               (2) Subject to this section, if a person who is or has been an ASIO  
9               officer obtained tax information under subsection (1) or (3) of this  
10              section or subsection 3EC(2), the person must not communicate or  
11              divulge the information to another person, or make a record of the  
12              tax information.

13              Penalty: Imprisonment for 2 years.

14              (3) In relation to a person who is an ASIO officer, each of the  
15              following is an exception to the prohibition in subsection (2):

16              (a) making a record of the information for the purposes of, or in  
17              connection with, the performance of the ASIO officer's  
18              duties in carrying out ASIO's 17(1) functions;

19              (b) divulging or communicating the information to another  
20              ASIO officer for the purposes of, or in connection with, the  
21              performance of that ASIO officer's duties in carrying out  
22              ASIO's 17(1) functions;

23              (c) divulging or communicating the information to a solicitor or  
24              barrister representing a person in:

25                      (i) a prosecution of a person for a tax-related offence; or

26                      (ii) proceedings for the making of a proceeds of crime  
27                      order;

28              for the purposes of, or in connection with, the prosecution or  
29              proceedings;

30              Note: Section 3EB deals with the use by a legal practitioner of tax  
31              information provided by ASIO.

32              (d) divulging or communicating the information to an IGIS  
33              officer for the purposes of, or in connection with, the  
34              performance of that IGIS officer's duties in relation to ASIO  
35              or employees of ASIO;

36              Note: Section 3EC deals with the use by an IGIS officer of tax  
37              information provided by ASIO.

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- 1 (e) divulging or communicating the information to a law  
2 enforcement agency officer for the purposes of, or in  
3 connection with:  
4 (i) the investigation of a serious offence; or  
5 (ii) an investigation relating to the making, or proposed or  
6 possible making, of a proceeds of crime order; or  
7 (iii) the prosecution, or proposed or possible prosecution, of  
8 a person for a tax-related offence; or  
9 (iv) the proceedings, or proposed or possible proceedings,  
10 for the making of a proceeds of crime order.

11 Note: Section 3E deals with the use by a law enforcement agency  
12 officer of tax information provided by ASIO.

- 13 (4) If a person who is or has been an ASIO officer obtained tax  
14 information under subsection (1) or (3) of this section or  
15 subsection 3EC(2), the person must not:  
16 (a) be required to divulge or communicate the information to a  
17 court; or  
18 (b) voluntarily give the information in evidence in proceedings  
19 before a court, except in the course of:  
20 (i) the prosecution of a person for a tax-related offence; or  
21 (ii) the proceedings for the making of a proceeds of crime  
22 order.

- 23 (5) A reference in this section to:  
24 (a) the possible making of a proceeds of crime order in respect  
25 of a person; or  
26 (b) the possible proceedings for the making of a proceeds of  
27 crime order in respect of a person;  
28 includes a reference to, the making of an order, or proceedings,  
29 that are only a possibility at the time in question because the  
30 person has not been convicted (within the meaning of section 5 of  
31 the *Proceeds of Crime Act 1987*) of an offence to which the order  
32 relates.

- 33 (6) In this section:  
34 ***proceeds of crime order*** has the meaning given by section 3E.  
35 ***serious offence*** has the meaning given by section 3E.



- 1 (a) making a record of the information for the purposes of, or in  
2 connection with, the performance of the IGIS officer's duties  
3 in relation to ASIO or employees of ASIO;
- 4 (b) divulging or communicating the information to another IGIS  
5 officer for the purposes of, or in connection with, the  
6 performance of that IGIS officer's duties in relation to ASIO  
7 or employees of ASIO;
- 8 (c) divulging or communicating the information to the  
9 Director-General of Security:
- 10 (i) in a draft report under section 21 of the  
11 *Inspector-General of Intelligence and Security Act*  
12 *1986*; or
- 13 (ii) in a report under section 22 or 25A of that Act;  
14 in relation to ASIO or employees of ASIO.
- 15 (3) If a person who is or has been an IGIS officer obtained tax  
16 information under section 3EA or subsection (2) of this section, the  
17 person must not:
- 18 (a) be required to divulge or communicate the information to a  
19 court; or
- 20 (b) voluntarily give the information in evidence in proceedings  
21 before a court.
- 22 (4) In this section:
- 23 ***tax information*** has the meaning given by section 3EA.