





# **Intelligence Services Legislation Amendment Act 2005**

**No. 128, 2005**

**An Act to amend laws relating to intelligence, and  
for related purposes**

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## **An Act to amend laws relating to intelligence, and for related purposes**

*[Assented to 4 November 2005]*

The Parliament of Australia enacts:

### **1 Short title**

This Act may be cited as the *Intelligence Services Legislation  
Amendment Act 2005*.

## 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.

<b>Commencement information</b>		
<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>
<b>Provision(s)</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 on which this Act receives the Royal Assent.	4 November 2005
2. Schedules 1 to 8	The 28th day after the day on which this Act receives the Royal Assent.	2 December 2005

Note: This table relates only to the provisions of this Act as originally passed by the Parliament and assented to. It will not be expanded to deal with provisions inserted in this Act after assent.

- (2) Column 3 of the table contains additional information that is not part of this Act. Information in this column may be added to or edited in any published version of this Act.

## 3 Schedule(s)

Each Act that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.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—Intelligence Services Act 2001

### Part 1—Amendments

#### 1 Section 3 (definition of *agency*)

After “ASIS”, insert “, DIGO”.

#### 2 Section 3 (after paragraph (a) of the definition of *agency head*)

Insert:

(aa) in relation to DIGO—the Director of DIGO; and

#### 3 Section 3 (paragraph (b) of the definition of *agency head*)

After “Director”, insert “of DSD”.

#### 4 Section 3 (definition of *Committee*)

Omit “ASIO, ASIS and DSD”, substitute “Intelligence and Security”.

#### 5 Section 3

Insert:

*DIGO* means that part of the Department of Defence known as the Defence Imagery and Geospatial Organisation.

#### 6 Section 3

Insert:

*DIO* means that part of the Department of Defence known as the Defence Intelligence Organisation.

#### 7 Section 3 (definition of *Director*)

Repeal the definition.

#### 8 Section 3

Insert:

*emergency response function* includes, but is not limited to, a function in relation to:

(a) search and rescue; or

- (b) emergency rescue; or
- (c) response to natural disasters.

### 9 Section 3

Insert:

*foreign power* has the same meaning as in the *Australian Security Intelligence Organisation Act 1979*.

### 10 Section 3

Insert:

*incidentally obtained intelligence* means intelligence:

- (a) that is obtained by ASIS in the course of obtaining intelligence under subsection 6(1), by DIGO in the course of obtaining intelligence under paragraph 6B(a), (b) or (c) or by DSD in the course of obtaining intelligence under paragraph 7(a); and
- (b) that is not intelligence of a kind referred to in those provisions.

### 11 Section 3 (definition of *intelligence information*)

Repeal the definition, substitute:

*intelligence information* means the following:

- (a) information obtained by ASIS under subsection 6(1);
- (b) information obtained by DIGO under paragraph 6B(a), (b) or (c);
- (c) information obtained by DSD under paragraph 7(a);
- (d) *incidentally obtained intelligence*.

### 12 Section 3

Insert:

*ONA* means the Office of National Assessments established by the *Office of National Assessments Act 1977*.

### 13 Section 3 (definition of *permanent resident*)

Repeal the definition, substitute:

*permanent resident* means:

- (a) a natural person who is a permanent resident within the meaning of the *Australian Security Intelligence Organisation Act 1979*; or
- (b) a body corporate incorporated under a law in force in a State or Territory, other than a body corporate whose activities one or more of the following controls, or is in a position to control, whether directly or indirectly:
  - (i) a foreign power;
  - (ii) a natural person who is neither an Australian citizen nor a person covered by paragraph (a);
  - (iii) a group of natural persons, none of whom is an Australian citizen or a person covered by paragraph (a).

**14 Section 3 (paragraph (b) of the definition of *responsible Minister*)**

Repeal the paragraph, substitute:

- (b) in relation to an agency—the Minister responsible for the agency; and
- (ba) in relation to DIO—the Minister responsible for DIO; and

**15 Section 3 (paragraph (c) of the definition of *responsible Minister*)**

Omit “DSD” (wherever occurring), substitute “ONA”.

**16 Section 3 (paragraph (a) of the definition of *staff member*)**

Repeal the paragraph, substitute:

- (a) in relation to ASIO—a member of the staff of ASIO (whether an employee of ASIO, a consultant or contractor to ASIO, or a person who is made available by another Commonwealth or State authority or other person to perform services for ASIO); and

**17 Section 3 (paragraphs (b) and (c) of the definition of *staff member*)**

Repeal the paragraphs, substitute:

- (b) in relation to an agency—a member of the staff of the agency (whether an employee of the agency, a consultant or contractor to the agency, or a person who is made available

by another Commonwealth or State authority or other person to perform services for the agency).

## **18 At the end of section 6**

Add:

- (7) In performing its functions, ASIS is not prevented from providing assistance to Commonwealth authorities, including to the Defence Force in support of military operations, and to State authorities.

## **19 After section 6A**

Insert:

### **6B Functions of DIGO**

The functions of DIGO are:

- (a) to obtain geospatial and imagery intelligence about the capabilities, intentions or activities of people or organisations outside Australia from the electromagnetic spectrum or other sources, for the purposes of meeting the requirements of the Government for such intelligence; and
- (b) to obtain geospatial and imagery intelligence from the electromagnetic spectrum or other sources for the purposes of meeting the operational, targeting, training and exercise requirements of the Defence Force; and
- (c) to obtain geospatial and imagery intelligence from the electromagnetic spectrum or other sources for the purposes of supporting Commonwealth authorities and State authorities in carrying out national security functions; and
- (d) to communicate, in accordance with the Government's requirements, intelligence referred to in paragraph (a), (b) or (c); and
- (e) to provide to Commonwealth authorities, State authorities and bodies approved in writing by the Minister, the following:
  - (i) imagery and other geospatial products, not being intelligence obtained under paragraph (a), (b) or (c);
  - (ii) assistance in relation to the production and use of such imagery or products;

- (iii) assistance in relation to the performance by those authorities or bodies of emergency response functions.

## **20 Paragraph 7(d)**

Repeal the paragraph, substitute:

- (d) to provide assistance to the Defence Force in support of military operations and to cooperate with the Defence Force on intelligence matters; and
- (e) to provide assistance to Commonwealth and State authorities in relation to:
  - (i) cryptography, and communication and computer technologies; and
  - (ii) other specialised technologies acquired in connection with the performance of its other functions; and
  - (iii) the performance by those authorities of search and rescue functions.

## **21 Subsection 8(1)**

After “ASIS,” insert “the responsible Minister in relation to DIGO”.

## **22 Subparagraphs 8(1)(a)(i) and (ii)**

Omit “who is overseas”.

## **23 Subsection 9(1B) (definition of *foreign power*)**

Repeal the definition.

## **24 After section 9**

Insert:

### **9A Authorisations in an emergency**

Despite subsections 8(1) to (4) and any direction given under subsection 8(1), if:

- (a) an emergency situation arises in which an agency head considers it necessary or desirable to undertake an activity or a series of activities; and
- (b) a direction under subsection 8(1) requires the agency to obtain an authorisation under section 9 before undertaking that activity or series of activities; and

- (c) the Minister referred to in the direction is not readily available or contactable;

the Prime Minister, the Minister for Defence, the Minister for Foreign Affairs or the Attorney-General may, subject to the requirements of section 9, issue an authorisation under that section in respect of that activity or series of activities.

## **25 After subsection 10(2)**

Insert:

- (2A) If, before an authorisation is cancelled under subsection (2) or otherwise ceases to have effect, the relevant agency head is satisfied that the grounds on which the authorisation was issued have ceased to exist:
- (a) the agency head must inform the Minister accordingly, and must take the steps necessary to ensure that activities under the authorisation are discontinued; and
  - (b) as soon as practicable after being so informed, the Minister must consider cancelling the authorisation under subsection (2).

## **26 After section 10**

Insert:

### **10A Agency heads must report on authorised activities**

- (1) An agency head must give to the responsible Minister in relation to the agency a written report in respect of each activity, or series of activities, carried out by the agency in reliance on an authorisation under section 9.
- (2) The report must be provided to the Minister within 3 months of the day on which the relevant authorisation ceased to have effect.

## **27 Paragraph 11(2)(c)**

After “6(1)(a)”, insert “, 6B(a), (b), or (c)”.

## **28 Paragraph 11(2)(d)**

Repeal the paragraph, substitute:

- (d) in the case of ASIS—providing assistance as mentioned in subsection 6(7); or

- (e) in the case of DIGO—performing the functions set out in paragraph 6B(e); or
- (f) in the case of DSD—performing the functions set out in paragraph 7(e).

## **29 After subsection 11(2)**

Insert:

- (2AA) An agency may communicate incidentally obtained intelligence to appropriate Commonwealth or State authorities or to authorities of other countries approved under paragraph 13(1)(c) if the intelligence relates to the involvement, or likely involvement, by a person in one or more of the following activities:
- (a) activities that present a significant risk to a person’s safety;
  - (b) acting for, or on behalf of, a foreign power;
  - (c) activities that are a threat to security;
  - (d) activities related to the proliferation of weapons of mass destruction or the movement of goods listed from time to time in the Defence and Strategic Goods List (within the meaning of regulation 13E of the *Customs (Prohibited Exports) Regulations 1958*);
  - (e) committing a serious crime.

## **30 Subsection 11(3)**

Omit “7(c) and (d)”, substitute “6B(b), (c), (d) and (e) and 7(c), (d) and (e)”.

## **31 Section 12A**

Omit “Both the Director”, substitute “The Director of DIGO, the Director of DSD”.

Note: The heading to section 12A is altered by omitting “**Director**” and substituting “**Directors**”.

## **32 Subsection 14(3) (definition of *staff member*)**

After “Director”, insert “of DIGO, the Director of DSD”.

## **33 Subsection 15(1)**

After “ASIS,”, insert “the responsible Minister in relation to DIGO”.

## **34 After paragraph 15(3)(a)**

Insert:

(ab) in the case of DIGO—the Director of DIGO; and

**35 Paragraph 15(3)(b)**

After “Director”, insert “of DSD”.

**36 Paragraph 15(3)(c)**

Omit “either”, substitute “any”.

**37 Subsection 27(1)**

After “consultant”, insert “or contractor”.

**38 Part 4 (heading)**

Repeal the heading, substitute:

**Part 4—Committee on Intelligence and Security**

**39 Subsection 28(1)**

Omit all the words from and including “ASIO” to and including “Act and”, substitute “Intelligence and Security is to be established”.

Note: The heading to section 28 is altered by omitting “ASIO, ASIS and DSD” and substituting “**Intelligence and Security**”.

**40 Subsection 28(2)**

Omit “7 members, 3 of whom must be Senators and 4”, substitute “9 members, 4 of whom must be Senators and 5”.

**41 Paragraph 29(1)(a)**

Omit “and DSD” (first occurring), substitute “, DIGO, DIO, DSD and ONA”.

**42 Paragraph 29(1)(a)**

Omit “ASIO, ASIS and DSD” (second occurring), substitute “of ASIO, ASIS, DIGO, DIO, DSD and ONA”.

**43 Paragraph 29(1)(b)**

Omit “or DSD”, substitute “, DIGO, DIO, DSD or ONA”.

**44 Subsection 29(2)**

Omit “or DSD”, substitute “, DIGO, DIO, DSD or ONA”.

**45 Paragraph 29(3)(a)**

Repeal the paragraph, substitute:

- (a) reviewing the intelligence gathering and assessment priorities of ASIO, ASIS, DIGO, DIO, DSD or ONA; or

**46 Paragraph 29(3)(b)**

Omit “or DSD”, substitute “, DIGO, DIO, DSD or ONA”.

**47 Paragraph 29(3)(c)**

Omit “or DSD”, substitute “, DIGO, DIO or DSD”.

**48 Paragraphs 29(3)(e) and (g)**

Omit “or DSD” (wherever occurring), substitute “, DIGO, DIO, DSD or ONA”.

**49 At the end of subsection 29(3)**

Add:

- ; or (h) reviewing the content of, or conclusions reached in, assessments or reports made by DIO or ONA, or reviewing sources of information on which such assessments or reports are based; or
- (i) reviewing the coordination and evaluation activities undertaken by ONA.

**50 After paragraph 30(b)**

Insert:

- (baa) the Director of DIGO;
- (bab) the Director of DIO;

**51 After paragraph 30(ba)**

Insert:

- (bb) the Director-General of ONA;

**52 After section 39**

Insert:

**39A Communication of certain information—DIGO**

- (1) A person commits an offence if:
- (a) the person communicates any information or matter that was prepared by or on behalf of DIGO in connection with its functions or relates to the performance by DIGO of its functions; and
  - (b) the information or matter has come to the knowledge or into the possession of the person by reason of:
    - (i) his or her being, or having been, a staff member of DIGO; or
    - (ii) his or her having entered into any contract, agreement or arrangement with DIGO; or
    - (iii) his or her having been an employee or agent of a person who has entered into a contract, agreement or arrangement with DIGO; and
  - (c) the communication was not made:
    - (i) to the Director of DIGO or a staff member by the person in the course of the person's duties as a staff member; or
    - (ii) to the Director of DIGO or a staff member by the person in accordance with a contract, agreement or arrangement; or
    - (iii) by the person in the course of the person's duties as a staff member, within the limits of authority conferred on the person by the Director of DIGO; or
    - (iv) with the approval of the Director of DIGO or of a staff member having the authority of the Director of DIGO to give such an approval.

Penalty: Imprisonment for 2 years or 120 penalty units, or both.

- (2) A prosecution for an offence against subsection (1) may be instituted only by the Attorney-General or with the Attorney-General's consent.

**53 Paragraph 40(1)(c)**

After "Director" (wherever occurring), insert "of DSD".

**54 Schedule 1 (heading)**

Repeal the heading, substitute:

## Schedule 1—Committee on Intelligence and Security

### 55 Part 1A of Schedule 1 (heading)

Repeal the heading, substitute:

### Part 1A—Preliminary

### 56 Clause 1A of Schedule 1 (definition of *agency*)

Omit “or DSD”, substitute “, DIGO, DIO, DSD or ONA”.

### 57 Clause 1A of Schedule 1 (after paragraph (b) of the definition of *agency head*)

Insert:

(ba) the Director of DIGO; or

(bb) the Director of DIO; or

### 58 Clause 1A of Schedule 1 (at the end of the definition of *agency head*)

Add:

; or (d) the Director-General of ONA.

### 59 Clause 1A of Schedule 1 (paragraph (a) of the definition of *operationally sensitive information*)

Omit “or DSD”, substitute “, DIGO, DIO, DSD or ONA”.

### 60 Clause 1A of Schedule 1 (paragraph (b) of the definition of *operationally sensitive information*)

Omit “or DSD”, substitute “, DIGO, DIO or DSD”.

### 61 Clause 1A of Schedule 1

Insert:

*staff member*, in relation to an agency, means a member of the staff of the agency (whether an employee of the agency, a consultant or contractor to the agency, or a person who is made available by another Commonwealth or State authority or other person to perform services for the agency).

## **62 At the end of Part 1A of Schedule 1**

Add:

### **1B Application of provisions of Schedule to subcommittees**

Parts 1 and 2 and clauses 20, 21 and 22 of this Schedule apply to a subcommittee appointed under clause 23 as if:

- (a) references to the Committee included references to the subcommittee; and
- (b) references to the Chair of the Committee included references to a member of the subcommittee authorised by the subcommittee for the purpose of the provision concerned.

Note: The heading to clause 3 of Schedule 1 is altered by omitting “ASIO, ASIS and DSD” and substituting “agencies”.

## **63 Paragraph 7(1)(a) of Schedule 1**

After “ASIS” (second occurring), insert “, DIGO”.

## **64 After clause 16 of Schedule 1**

Insert:

### **16A Deputy Chair**

- (1) There must be a Deputy Chair of the Committee who must be a member elected by the members from time to time.
- (2) The Deputy Chair holds office during the pleasure of the Committee.
- (3) A person holding office as Deputy Chair ceases to hold the office if:
  - (a) the person ceases to be a member; or
  - (b) the person resigns the office.
- (4) A person holding office as Deputy Chair may resign the office by giving a signed notice of resignation to a meeting of the Committee.

## **64A Subclause 17(5) of Schedule 1**

Repeal the subclause, substitute:

- (5) If:
- (a) the Chair is not present at a meeting of the Committee; and
  - (b) either:
    - (i) the meeting is one at which a question is to be decided by voting, or could reasonably be expected to be so decided; or
    - (ii) throughout a continuous period of more than one month immediately preceding the day of the meeting, the Chair was absent from duty or from Australia, or was for any reason unable to perform the duties of his or her office as Chair;

the members present are to appoint a Government member to preside.

- (5A) If:
- (a) the Chair is not present at a meeting of the Committee; and
  - (b) the members are not required by subclause (5) to appoint a Government member to preside;
- then:
- (c) if the Deputy Chair is present at the meeting—the Deputy Chair is to preside; or
  - (d) if the Deputy Chair is not present at the meeting—the members present are to appoint a member to preside.
- (5B) A member who presides at a meeting of the Committee under subclause (5) or (5A) may exercise, in relation to the meeting and any matter arising out of the meeting, any of the powers of the Chair.

## **65 Paragraph 18(1)(a) of Schedule 1**

Omit “4”, substitute “5”.

## **66 Subclause 20(2) of Schedule 1**

Repeal the subclause, substitute:

- (2) The Committee must not conduct a review in public without the approval of:
- (a) the Minister responsible for ASIO; and
  - (b) the Minister responsible for ASIS; and
  - (c) the Minister responsible for DIGO, DIO and DSD; and

(d) the Minister responsible for ONA.

## **67 At the end of Schedule 1**

Add:

## **Part 4—Subcommittees**

### **23 Subcommittees**

- (1) The Committee may appoint one or more subcommittees of at least 3 of its members to inquire into and report to the Committee upon such matters with which the Committee is concerned as the Committee directs.
- (2) A subcommittee must report in writing to the Committee as soon as practicable on each matter referred to that subcommittee by the Committee.
- (3) A subcommittee may sit at any time, including at a time when the Committee is sitting.

### **24 Term of office**

- (1) A member of a subcommittee holds office during the pleasure of the Committee.
- (2) A member of a subcommittee ceases to hold office if:
  - (a) the person ceases to be a member of the Committee; or
  - (b) the person resigns the office.
- (3) A member of a subcommittee may resign his or her office by giving a signed notice of resignation to the Chair of the Committee.

### **25 Operation of subcommittees**

- (1) A subcommittee may determine matters relating to the operation of the subcommittee, except as mentioned in subsection (2).
- (2) If the Chair of the Committee gives a direction to a subcommittee in relation to the operation of the subcommittee, the subcommittee must operate in accordance with the direction.

## Part 2—Application and transitional provisions

### 68 Application of amendment relating to cancellation of certain authorised operations

The amendment made by item 25 applies to:

- (a) authorisations in force under section 9 of the *Intelligence Services Act 2001* at the time of the commencement of that item; and
- (b) authorisations given under that section after the commencement of that item.

### 69 Application of amendment relating to reports of authorised operations

The amendment made by item 26 applies to an activity, or series of activities, authorised under section 9 of the *Intelligence Services Act 2001* after the commencement of that item.

### 70 Committee on Intelligence and Security—transitional provision

- (1) This item applies to the Parliamentary Joint Committee on ASIO, ASIS and DSD (the *Committee*) that was in existence under the *Intelligence Services Act 2001* immediately before the commencement of this item.
- (2) The Committee continues in existence by force of this item, after the commencement of this item, as the Parliamentary Joint Committee on Intelligence and Security under the *Intelligence Services Act 2001*, subject to the amendments made by this Schedule.
- (3) A person who held office as a member of the Committee immediately before the commencement of this item is taken to have been appointed, immediately after that commencement, as a member of the Parliamentary Joint Committee on Intelligence and Security.
- (4) The person who held office as Chair of the Committee immediately before the commencement of this item is taken to have been elected, immediately after that commencement, as Chair of the Parliamentary Joint Committee on Intelligence and Security.

- (5) If the Committee was conducting a review immediately before commencement:
- (a) the Parliamentary Joint Committee on Intelligence and Security may continue the review after that commencement; and
  - (b) anything done for the purposes of the review before commencement is taken to have been done for the purposes of the review as continued in accordance with this item.

## **Schedule 2—Inspector-General of Intelligence and Security Act 1986**

### **Part 1—Amendments relating to DIGO**

#### **1 Subsection 3(1) (definition of *agency*)**

After “ASIS,” insert “DIGO,”.

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

Insert:

*DIGO* means that part of the Department of Defence known as the Defence Imagery and Geospatial Organisation, and any part of the Defence Force that performs functions on behalf of that part of the Department.

#### **3 Subsection 3(1) (definition of *head*)**

After “ASIS,” (first occurring), insert “DIGO,”.

#### **4 Subsection 3(1) (definition of *head*)**

After “ASIS,” (second occurring), insert “the Director of DIGO,”.

#### **5 Subsection 8(2)**

After “ASIS”, insert “, DIGO”.

#### **6 Subsection 8(4)**

After “ASIS”, insert “, DIGO”.

#### **7 Paragraphs 32A(1)(d) and (5)(b)**

Before “DIO”, insert “DIGO,”.

#### **8 Subsection 32B(1)**

After “ASIS”, insert “, DIGO”.

## Part 2—Other amendments

### 9 Subsection 3(1)

Insert:

*Ombudsman* means the Commonwealth Ombudsman.

### 10 Paragraph 8(3)(a)

After “Minister”, insert “or of the Inspector-General’s own motion”.

### 11 At the end of subsection 8(3)

Add:

; and (c) at the request of the responsible Minister or of the Inspector-General’s own motion, to inquire into any matter in relation to the statutory independence of ONA.

### 12 Subsection 8(7)

After “ASIO” (first occurring), insert “or ASIS”.

### 13 Subsection 8(7)

Omit “other than the Director-General of Security or employees of ASIO”, substitute:

other than:

- (a) in the case of an employee of ASIO—the Director-General of Security or employees of ASIO; or
- (b) in the case of an employee of ASIS—the Director-General of ASIS or employees of ASIS.

### 14 At the end of Division 1 of Part II

Add:

### 9B Power to enter places of detention

The Inspector-General may, after notifying the Director-General of Security, at any reasonable time, enter any place where a person is being detained under Division 3 of Part III of the *Australian Security Intelligence Organisation Act 1979* for the purposes of an inspection under section 9A.

### **15 Section 15**

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

Note: The heading to section 15 is altered by omitting “**Minister and agency head**” and substituting “**certain persons**”.

### **16 Section 15**

After “Minister and”, insert “, subject to subsections (2) and (3),”.

### **17 At the end of section 15**

Add:

- (2) The Inspector-General is not required by subsection (1) to advise the head of an agency that the Inspector-General proposes to conduct an inquiry into a matter that relates directly to the head of the agency.
- (3) However, if the Inspector-General does not advise the head of an agency that the Inspector-General proposes to conduct an inquiry into a matter that relates directly to the head of the agency, the Inspector-General must instead advise:
  - (a) if the matter relates to the head of ASIO, ASIS or ONA—the responsible Minister in relation to ASIO, ASIS or ONA, as the case requires; or
  - (b) if the matter relates to the head of DIGO, DIO or DSD—the Secretary of the Department of Defence.
- (4) To avoid doubt, this section is subject to section 17.

### **18 Section 16**

After “Auditor-General” (first occurring), insert “and the Ombudsman”.

Note: The heading to section 16 is altered by adding at the end “**and Ombudsman**”.

### **19 Section 16**

After “Auditor-General” (second occurring), insert “or the Ombudsman”.

### **20 Section 16**

Omit “by both the Inspector-General and the Auditor-General”, substitute “by the Inspector-General and either or both of the Auditor-General and the Ombudsman”.

## 21 Section 19

Omit “(1)”.

## 22 After section 19

Insert:

### 19A Power to enter places of detention

The Inspector-General may, after notifying the Director-General of Security, at any reasonable time, enter any place where a person is being detained under Division 3 of Part III of the *Australian Security Intelligence Organisation Act 1979* for the purposes of an inquiry under this Act.

## 23 Subsection 21(1)

Before “shall” (second occurring), insert “, subject to subsections (1A) and (1B),”.

## 24 After subsection 21(1)

Insert:

- (1A) The Inspector-General is not required by subsection (1) to give to the head of an agency a copy of a draft report setting out conclusions and recommendations in respect of a matter that relates directly to the head of the agency.
- (1B) However, if the Inspector-General does not give to the head of an agency a copy of a draft report setting out conclusions and recommendations in respect of a matter that relates directly to the head of the agency, the Inspector-General must give a copy of that report to:
- (a) if the matter relates to the head of ASIO, ASIS or ONA—the responsible Minister in relation to ASIO, ASIS or ONA, as the case requires; or
  - (b) if the matter relates to the head of DIGO, DIO or DSD—the Secretary of the Department of Defence.
- (1C) To avoid doubt, subsections (1), (1A) and (1B) are subject to section 17.

## 25 Paragraph 21(2)(a)

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After “agency”, insert “, a responsible Minister or the Secretary of the Department of Defence”.

## **26 Paragraph 21(2)(b)**

After “agency”, insert “, the responsible Minister or the Secretary”.

## **27 Subsection 22(1)**

Omit “report to the head of the agency.”, substitute:

report:

- (a) if a copy of the draft report was given to the head of the agency under subsection 21(1)—to the head of the agency; or
- (b) otherwise—to the person to whom a copy of the draft report was given under subsection 21(1B).

Note: The heading to section 22 is altered by adding at the end “**given to agency head**”.

## **28 After section 24**

Insert:

### **24A Action as a result of reports given to Minister or Secretary**

- (1) This section applies if the Inspector-General:
  - (a) has conducted an inquiry under this Act into a matter relating to an agency; and
  - (b) has given a copy of the report in relation to the inquiry to the responsible Minister in relation to the agency, or to the Secretary of the Department of Defence, because of the operation of subsection 21(1B).
- (2) If the responsible Minister or the Secretary takes or proposes to take any action as a result of the conclusions and recommendations set out in the report, he or she must give to the Inspector-General details of the action taken or proposed to be taken.
- (3) If, in the opinion of the Inspector-General, the responsible Minister or the Secretary does not take, within a reasonable period, action that is adequate and appropriate in the circumstances:
  - (a) the Inspector-General may prepare a report relating to that matter; and
  - (b) if the Inspector-General prepares such a report, he or she must give a copy of the report to the Prime Minister.

**29 Subsection 35(2)**

After “8(1)(d)”, insert “or 8(3)(c)”.

## Schedule 3—Office of National Assessments Act 1977

### 1 Section 3 (definition of *Assessments Board* or *Board*)

Repeal the definition.

### 2 Section 3

Insert:

*Department of Defence* means the Department administered by the Minister administering section 1 of the *Defence Act 1903*.

### 3 Section 3

Insert:

*Department of Foreign Affairs and Trade* means the Department administered by the Minister administering the *Diplomatic Privileges and Immunities Act 1967*.

### 4 Paragraph 5(1)(d)

Repeal the paragraph, substitute:

- (d) to carry out the coordination and evaluation functions specified in subsections (1A) and (1B).

### 5 After subsection 5(1)

Insert:

(1A) The coordination functions of the Office are:

- (a) to coordinate the foreign intelligence activities that Australia engages in, including in relation to setting Australia's foreign intelligence requirements based on Australia's foreign intelligence priorities; and
- (b) to coordinate matters of common interest to Australia's foreign intelligence agencies, including, but not limited to, the following:
- (i) policy in relation to foreign intelligence;
- (ii) long-term planning and cross-agency planning in relation to foreign intelligence;

- (iii) liaison with international partners, consistent with the capacity of the agencies to develop relationships with their counterparts in other countries.

(1B) The evaluation functions of the Office are:

- (a) to evaluate the foreign intelligence activities that Australia engages in, having regard to:
  - (i) Australia's foreign intelligence priorities and requirements; and
  - (ii) the intelligence needs of relevant Ministers; and
- (b) to provide advice to the Minister or to relevant Departments on the adequacy of the resources available for foreign intelligence activities; and
- (c) to provide advice to the Minister on any improvements or changes that should be made to remedy inadequacies, including, but not limited to, inadequacies relating to coordination arrangements.

## **6 Subsection 6(1)**

Omit "subsection (2)", substitute "subsections (2A) and (2B)".

## **7 Subsection 6(2)**

Repeal the subsection, substitute:

- (2) It is the function of the National Assessments Board to consider national assessments made by the Office.
- (2A) The membership of the National Assessments Board may be varied by the Director-General from time to time, but must include:
  - (a) the persons specified in subsection (1); and
  - (b) an officer of the Department of Foreign Affairs and Trade; and
  - (c) an officer of the Department of Defence; and
  - (d) an officer of the Department of the Prime Minister and Cabinet; and
  - (e) a member of the Defence Force.
- (2B) The Director-General is to take reasonable steps to ensure that a meeting of the National Assessments Board includes representatives of departments and agencies appropriate to the

subject matter of the national assessment or national assessments under consideration by the Board at that meeting.

**8 Subsection 6(5)**

Repeal the subsection.

**9 Section 7**

Repeal the section.

**10 Subsection 8(1)**

Omit “appropriate”, substitute “National”.

Note: The heading to section 8 is altered by omitting “relevant” and substituting “National”.

**11 Subsection 8(1)**

Before “assessment” (first occurring), insert “national”.

**12 Subsection 8(2)**

Omit “an Assessments”, substitute “the National Assessments”.

**13 Subsection 8(2)**

Omit “an assessment”, substitute “a national assessment”.

**14 Subsection 8(3)**

Before “Board”, insert “National Assessments”.

**15 Subsection 8(3)**

Before “assessment”, insert “national”.

**16 Subsection 12(4)**

Repeal the subsection.

## **Schedule 4—Australian Security Intelligence Organisation Act 1979**

### **1 At the end of section 29**

Add:

- (4) The Director-General must, within 3 working days after issuing a warrant under this section, give a copy of the warrant to the Inspector-General of Intelligence and Security.

## **Schedule 5—Telecommunications (Interception) Act 1979**

### **1 At the end of section 10**

Add:

- (5) The Director-General must, within 3 working days after issuing a warrant under this section, give a copy of the warrant to the Inspector-General of Intelligence and Security.

## Schedule 6—Privacy Act 1988

### 1 Sub-subparagraph 7(1)(a)(i)(B)

Before “Part”, insert “Division 1 of”.

### 2 After paragraph 7(1)(c)

Insert:

- (ca) an act done, or a practice engaged in, as the case may be, by a part of the Department of Defence specified in Division 2 of Part I of Schedule 2 to the *Freedom of Information Act 1982*, other than an act done, or a practice engaged in, in relation to the activities of that part of the Department; or

### 3 Paragraph 7(1)(g)

After “Organisation”, insert “, the Defence Imagery and Geospatial Organisation”.

### 4 At the end of subsection 7(1A)

Add:

- ; or (c) the Defence Signals Directorate of the Department of Defence.

### 5 Paragraph 7(2)(b)

After “Organisation”, insert “, the Defence Imagery and Geospatial Organisation”.

## Schedule 7—Freedom of Information Act 1982

### 1 Subsection 4(1)

Insert:

*Defence Imagery and Geospatial Organisation* means that part of the Department of Defence known as the Defence Imagery and Geospatial Organisation.

### 2 Subsection 4(1)

Insert:

*Defence Intelligence Organisation* means that part of the Department of Defence known as the Defence Intelligence Organisation.

### 3 Subsection 4(1)

Insert:

*Defence Signals Directorate* means that part of the Department of Defence known as the Defence Signals Directorate.

### 4 Subsection 7(1)

Before “Part I”, insert “Division 1 of”.

### 5 Subsection 7(1)

Omit “Part” (second occurring), substitute “Division”.

### 6 After subsection 7(1)

Insert:

(1A) For the purposes of the definition of *agency*, a part of the Department of Defence specified in Division 2 of Part I of Schedule 2:

- (a) is taken not to be included in the Department of Defence (or in any other Department) for the purposes of this Act; and
- (b) to avoid doubt, is not an agency in its own right for the purposes of this Act.

### 7 Subsection 7(2A)

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Before “Defence Intelligence”, insert “Defence Imagery and Geospatial Organisation, the”.

**8 Subsection 16(2)**

Omit all the words after “shall be”, substitute:

transferred:

- (c) to the Department corresponding to the Department of State administered by the Minister who administers the enactment by or under which the body or person is established, continued in existence or appointed; or
- (d) if the request relates to a document that originated with, or has been received from, a part of the Department of Defence specified in Division 2 of Part I of Schedule 2—to that Department.

**9 Subsection 51C(2)**

Omit all the words after “must”, substitute:

transfer the application:

- (c) to the Department corresponding to the Department of State administered by the Minister who administers the enactment by or under which the body or person is established, continued in existence or appointed; or
- (d) if the application relates to a document that originated with, or has been received from, a part of the Department of Defence specified in Division 2 of Part I of Schedule 2—to that Department.

**10 After the heading to Part I of Schedule 2**

Insert:

**Division 1**

**11 At the end of Part I of Schedule 2**

Add:

**Division 2**

Defence Imagery and Geospatial Organisation

Defence Intelligence Organisation

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Defence Signals Directorate

**12 Part II of Schedule 2**

Omit:

Department of Defence, in relation to documents in respect of  
activities of the Defence Intelligence Organisation and the  
Defence Signals Directorate

## **Schedule 8—Consequential amendments of other Acts**

### **Part 1—Consequential amendments relating to DIGO**

#### *Archives Act 1983*

##### **1 After paragraph 29(8)(b)**

Insert:

- (ba) the Defence Imagery and Geospatial Organisation;

#### *Australian Security Intelligence Organisation Act 1979*

##### **2 Section 4 (definition of *intelligence or security agency*)**

Repeal the definition, substitute:

*intelligence or security agency* means any of the following:

- (a) the Australian Secret Intelligence Service;
- (b) the Office of National Assessments;
- (c) that part of the Department of Defence known as the Defence Imagery and Geospatial Organisation;
- (d) that part of the Department of Defence known as the Defence Intelligence Organisation;
- (e) that part of the Department of Defence known as the Defence Signals Directorate.

#### *Crimes Act 1914*

##### **3 Section 85ZL (at the end of paragraphs (a), (b) and (c) of the definition of *intelligence or security agency*)**

Add “or”.

##### **4 Section 85ZL (at the end of the definition of *intelligence or security agency*)**

Add:

- ; or (f) that part of the Department of Defence known as the Defence Imagery and Geospatial Organisation.

## ***Crimes (Overseas) Act 1964***

### **5 Section 3**

Insert:

*DIGO* has the same meaning as in the *Intelligence Services Act 2001*.

### **6 Section 3 (definition of *staff member*)**

After “ASIS”, insert “, DIGO”.

### **7 Paragraph 3A(10)(b)**

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

Note: The heading to subsection 3A(10) is altered by inserting “, *DIGO*” after “ASIS”.

### **8 Subsection 3A(10) (paragraph (a) of the note)**

After “ASIS”, insert “, DIGO”.

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

### **9 Subsection 476.5(1) of the *Criminal Code***

After “ASIS”, insert “, DIGO”.

### **10 Subsection 476.5(3) of the *Criminal Code***

Insert:

*DIGO* means that part of the Department of Defence known as the Defence Imagery and Geospatial Organisation.

### **11 Subsection 476.5(3) of the *Criminal Code* (paragraphs (a) and (b) of the definition of *staff member*)**

After “consultant”, insert “or contractor”.

### **12 Subsection 476.5(3) of the *Criminal Code* (at the end of the definition of *staff member*)**

Add:

; and (c) in relation to DIGO—the Director of DIGO or a member of the staff of DIGO (whether an employee of DIGO, a consultant or contractor to DIGO, or a person who is made

available by another Commonwealth or State authority or other person to perform services for DIGO).

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

**13 Subsection 11(4)**

Before “or that part”, insert “, that part of the Department of Defence known as the Defence Imagery and Geospatial Organisation (including any part of the Defence Force that performs functions on behalf of that part of the Department)”.

**14 Subsection 21(3)**

Before “Defence Intelligence Organisation”, insert “Defence Imagery and Geospatial Organisation, the”.

## **Part 2—Consequential amendments relating to the Parliamentary Joint Committee on Intelligence and Security**

### *Australian Security Intelligence Organisation Act 1979*

#### **15 Section 4 (definition of *Committee on ASIO, ASIS and DSD*)**

Repeal the definition.

#### **16 Section 4**

Insert:

*Committee on Intelligence and Security* means the Parliamentary Joint Committee on Intelligence and Security established under the *Intelligence Services Act 2001*.

#### **17 Subsection 8A(6)**

Omit “ASIO, ASIS and DSD”, substitute “Intelligence and Security”.

#### **18 Paragraph 34C(3A)(e)**

Omit “ASIO, ASIS and DSD”, substitute “Intelligence and Security”.

#### **19 Subsection 92(1)**

Omit “ASIO, ASIS and DSD”, substitute “Intelligence and Security”.

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[*Minister’s second reading speech made in—  
Senate on 16 June 2005  
House of Representatives on 11 October 2005*]

(91/05)

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