



National Security Legislation Amendment (Comprehensive Review and Other Measures No. 2) Act 2023

No. 53, 2023

**An Act to amend the law relating to national
security and intelligence matters, and for related
purposes**

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

Contents

| | | |
|-------------------------------------------------------------------------------------|-------------------|----------|
| 1 | Short title..... | 2 |
| 2 | Commencement..... | 2 |
| 3 | Schedules..... | 2 |
| Schedule 1—Amendments | | 3 |
| Part 1—Powers and functions of the Attorney-General | | 3 |
| <i>Acts Interpretation Act 1901</i> | | 3 |
| <i>Australian Security Intelligence Organisation Act 1979</i> | | 3 |
| <i>Law Officers Act 1964</i> | | 3 |
| <i>Telecommunications (Interception and Access) Act 1979</i> | | 4 |
| Part 2—Defences for certain national infrastructure related offences | | 5 |
| <i>Criminal Code Act 1995</i> | | 5 |
| Part 3—Membership of the Parliamentary Joint Committee on Intelligence and Security | | 7 |
| <i>Intelligence Services Act 2001</i> | | 7 |
| Part 4—Spent convictions | | 8 |
| <i>Crimes Act 1914</i> | | 8 |
| Part 5—Reporting by the Inspector-General of Intelligence and Security | | 9 |
| <i>Inspector-General of Intelligence and Security Act 1986</i> | | 9 |
| <i>Public Interest Disclosure Act 2013</i> | | 10 |
| Part 6—Investigations by the Ombudsman | | 11 |
| <i>Ombudsman Act 1976</i> | | 11 |
| Part 7—Exemptions from freedom of information law | | 12 |
| <i>Freedom of Information Act 1982</i> | | 12 |
| Part 8—Review under the archives law | | 14 |
| <i>Administrative Appeals Tribunal Act 1975</i> | | 14 |
| <i>Archives Act 1983</i> | | 15 |

| | |
|----------------------------------------|----|
| <i>Freedom of Information Act 1982</i> | 16 |
| Part 9—Other amendments | 18 |
| <i>Intelligence Services Act 2001</i> | 18 |

| | | |
|----|---------------------------------------------------------------------------------------------------------|--------------|
| ii | <i>National Security Legislation Amendment (Comprehensive Review and Other Measures No. 2) Act 2023</i> | No. 53, 2023 |
|----|---------------------------------------------------------------------------------------------------------|--------------|



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No. 53, 2023

**An Act to amend the law relating to national
security and intelligence matters, and for related
purposes**

[Assented to 11 August 2023]

The Parliament of Australia enacts:

*No. 53, 2023 National Security Legislation Amendment (Comprehensive Review and
Other Measures No. 2) Act 2023 1*

1 Short title

This Act is the *National Security Legislation Amendment (Comprehensive Review and Other Measures No. 2) Act 2023*.

2 Commencement

- (1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

| Commencement information | | |
|--------------------------|---------------------------------------------------|----------------|
| Column 1 | Column 2 | Column 3 |
| Provisions | Commencement | Date/Details |
| 1. The whole of this Act | The day after this Act receives the Royal Assent. | 12 August 2023 |

Note: This table relates only to the provisions of this Act as originally enacted. It will not be amended to deal with any later amendments of this Act.

- (2) Any information in column 3 of the table is not part of this Act. Information may be inserted in this column, or information in it may be edited, in any published version of this Act.

3 Schedules

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

Schedule 1—Amendments

Part 1—Powers and functions of the Attorney-General

Acts Interpretation Act 1901

1 Subsection 19B(2) (note)

Repeal the note, substitute:

- Note 1: For when the Governor-General may make a substituted reference order that relates to certain provisions of the *Australian Security Intelligence Organisation Act 1979*, or the *Telecommunications (Interception and Access) Act 1979*, that refer to the Attorney-General, see sections 5B and 6V of those Acts respectively.
- Note 2: A substituted reference order may be amended or revoked in the same way as it is made (see subsection 33(3) of this Act).

Australian Security Intelligence Organisation Act 1979

2 At the end of Part I

Add:

5B Substitution of references to the Attorney-General

Unless the Prime Minister is satisfied that exceptional circumstances exist, the Governor-General must not make a substituted reference order under subsection 19B(2) of the *Acts Interpretation Act 1901* that relates to a provision of this Act (other than section 34JE) that refers to the Attorney-General.

Law Officers Act 1964

3 Subsection 17(6)

Repeal the subsection, substitute:

- (6) This section does not apply to the following:

Schedule 1 Amendments

Part 1 Powers and functions of the Attorney-General

- (a) the powers and functions of the Attorney-General under the *Australian Security Intelligence Organisation Act 1979* (other than under subsections 34JE(3) and (4));
- (b) the powers and functions of the Attorney-General under the *Telecommunications (Interception and Access) Act 1979*.

Telecommunications (Interception and Access) Act 1979

4 At the end of Part 1-2

Add:

6V Substitution of references to the Attorney-General

Unless the Prime Minister is satisfied that exceptional circumstances exist, the Governor-General must not make a substituted reference order under subsection 19B(2) of the *Acts Interpretation Act 1901* that relates to a provision of this Act that refers to the Attorney-General.

Part 2—Defences for certain national infrastructure related offences

Criminal Code Act 1995

5 Section 473.1 of the *Criminal Code*

Insert:

ASIO officer means:

- (a) the Director-General of Security; or
- (b) an ASIO employee (within the meaning of the *Australian Security Intelligence Organisation Act 1979*); or
- (c) an ASIO affiliate (within the meaning of that Act).

6 After subsection 474.6(4) of the *Criminal Code*

Insert:

- (4A) A person is not criminally responsible for an offence against subsection (1) or (3) if:
- (a) the person is, at the time of the offence, an ASIO officer acting in good faith in the course of the person's duties; and
 - (b) the conduct of the person is reasonable in the circumstances for the purpose of performing that duty.

Note 1: A defendant bears an evidential burden in relation to the matter in this subsection, see subsection 13.3(3).

Note 2: See also subsection 475.1(2) for the interaction between this defence and the *Radiocommunications Act 1992*.

7 Subsection 476.1(1) of the *Criminal Code*

Insert:

ASIO officer means:

- (a) the Director-General of Security; or
- (b) an ASIO employee (within the meaning of the *Australian Security Intelligence Organisation Act 1979*); or
- (c) an ASIO affiliate (within the meaning of that Act).

8 After subsection 477.2(1) of the *Criminal Code*

Insert:

- (2) A person is not criminally responsible for an offence against subsection (1) if:
- (a) the person is, at the time of the offence, an ASIO officer acting in good faith in the course of the person's duties; and
 - (b) the conduct of the person is reasonable in the circumstances for the purpose of performing that duty.

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

9 After subsection 477.3(1) of the *Criminal Code*

Insert:

- (2) A person is not criminally responsible for an offence against subsection (1) if:
- (a) the person is, at the time of the offence, an ASIO officer acting in good faith in the course of the person's duties; and
 - (b) the conduct of the person is reasonable in the circumstances for the purpose of performing that duty.

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

10 Application provision

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

Part 3—Membership of the Parliamentary Joint Committee on Intelligence and Security

Intelligence Services Act 2001

11 Subsection 28(2)

Repeal the subsection, substitute:

- (2) The Committee is to consist of 13 members and must include at least:
- (a) 2 Senators who are Government members; and
 - (b) 2 members of the House of Representatives who are Government members; and
 - (c) 2 Senators who are non-Government members; and
 - (d) 2 members of the House of Representatives who are non-Government members.

12 Paragraph 18(1)(a) of Schedule 1

Omit “6 members”, substitute “7 members”.

13 Application provision

The amendments of the *Intelligence Services Act 2001* made by this Part:

- (a) apply, on and after the commencement of this item, in relation to the Committee established in respect of the 47th Parliament; and
- (b) do not affect the appointment of a member of that Committee made before the commencement of this item.

Part 4—Spent convictions

Crimes Act 1914

14 At the end of Subdivision B of Division 6 of Part VIIC

Add:

85ZZJA Further exclusions—Australian Security Intelligence Organisation

- (1) Division 3 does not apply in relation to:
 - (a) the disclosure of information to or by ASIO, or an ASIO officer, if the disclosure is made for the purposes of the performance of the functions, or the exercise of the powers, of ASIO or the officer; or
 - (b) filing or recording information that comes into the possession of ASIO, or an ASIO officer, if the filing or recording is done for the purposes of the performance of the functions, or the exercise of the powers, of ASIO or the officer; or
 - (c) the use by ASIO, or an ASIO officer, of information for the purposes of the performance of the functions, or the exercise of the powers, of ASIO or the officer.

- (2) In this section:

ASIO means the Australian Security Intelligence Organisation.

ASIO officer means:

- (a) the Director-General of Security; or
- (b) an ASIO employee (within the meaning of the *Australian Security Intelligence Organisation Act 1979*); or
- (c) an ASIO affiliate (within the meaning of that Act).

Part 5—Reporting by the Inspector-General of Intelligence and Security

Inspector-General of Intelligence and Security Act 1986

15 After subsection 35(2AA)

Insert:

- (2AB) The Inspector-General must include in a report referred to in subsection (2):
- (a) the number of complaints made to the Inspector-General under Division 2 of Part II of this Act during the period to which the report relates; and
 - (b) the kinds of matters to which the complaints related; and
 - (c) the actions taken by the Inspector-General in response to the complaints, including the number of inquiries conducted by the Inspector-General in response to the complaints; and
 - (d) a summary of the actions taken by the relevant intelligence agencies in response to the following:
 - (i) the complaints;
 - (ii) the Inspector-General's conclusions and recommendations as a result of the inquiries.
- (2AC) The Inspector-General must include in a report referred to in subsection (2):
- (a) the number of disclosures of information received by the Inspector-General under the *Public Interest Disclosure Act 2013* during the period to which the report relates; and
 - (b) the kinds of disclosable conduct with which the information was concerned; and
 - (c) the actions taken by the Inspector-General to handle the disclosures, including:
 - (i) the number of inquiries conducted by the Inspector-General under this Act; and
 - (ii) the number of investigations conducted by the Inspector-General under the *Public Interest Disclosure Act 2013*; and

- (d) a summary of the actions taken by the relevant intelligence agencies in response to the following:
 - (i) the disclosures;
 - (ii) the Inspector-General's conclusions and recommendations as a result of the inquiries or investigations;
 - (iii) any other matters set out in reports relating to the inquiries or investigations.

(2AD) The head of an intelligence agency must give the Inspector-General such information and assistance as the Inspector-General reasonably requires in relation to the matters mentioned in paragraphs (2AB)(d) and (2AC)(d).

Public Interest Disclosure Act 2013

16 At the end of subsection 76(2)

Add:

Note: The IGIS's annual report is also required to include information about public interest disclosures received by the IGIS: see section 35 of the *Inspector-General of Intelligence and Security Act 1986*.

17 Application provision

Subsections 35(2AB) to (2AD) of the *Inspector-General of Intelligence and Security Act 1986*, as inserted by this Part, apply in relation to an annual report for a period that begins on or after the commencement of this item.

Part 6—Investigations by the Ombudsman

Ombudsman Act 1976

18 Subsection 3(1)

Insert:

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

19 After paragraph 5(2)(d)

Insert:

- (e) action taken by any of the following:
 - (i) the Australian Security Intelligence Organisation;
 - (ii) the Australian Secret Intelligence Service;
 - (iii) the part of the Department of Defence known as the Australian Geospatial-Intelligence Organisation;
 - (iv) the Australian Signals Directorate;
 - (v) the part of the Department of Defence known as the Defence Intelligence Organisation;
 - (vi) the Office of National Intelligence; or

Part 7—Exemptions from freedom of information law

Freedom of Information Act 1982

20 Subparagraph 7(2A)(a)(v)

Repeal the subparagraph, substitute:

- (v) the Australian Geospatial-Intelligence Organisation (other than a document that has originated with, or has been received from, the Australian Hydrographic Office in the performance of its functions under subsection 223(2) of the *Navigation Act 2012*);

21 At the end of subsection 7(2A)

Add:

- Note: The Australian Hydrographic Office is part of the Australian Geospatial-Intelligence Organisation (see subsection 6B(3) of the *Intelligence Services Act 2001*).

22 After subsection 7(2F)

Insert:

- (2G) A Minister and an agency are exempt from the operation of this Act in relation to the following documents:
- (a) a document (an *AUSTRAC intelligence document*) that has originated with, or has been received from, the Australian Transaction Reports and Analysis Centre (*AUSTRAC*) and that concerns information that was communicated to AUSTRAC:
 - (i) under section 16 of the *Financial Transaction Reports Act 1988*; or
 - (ii) under section 41 of the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006*; or
 - (iii) in response to a notice given under section 49 of the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006*;
 - (b) a document that contains a summary of, or an extract or information from, an AUSTRAC intelligence document, to

the extent that it contains such a summary, extract or information.

23 Division 1 of Part II of Schedule 2 (item dealing with the Australian Transaction Reports and Analysis Centre)

Repeal the item.

24 Application provision

Subsection 7(2G) of the *Freedom of Information Act 1982*, as inserted by this Part, applies in relation to the following requests for access to a document:

- (a) a request made on or after the commencement of this item;
- (b) a request made, but not finally determined, before that commencement.

Part 8—Review under the archives law

Administrative Appeals Tribunal Act 1975

25 Subsection 3(1)

Insert:

exempt security record means:

- (a) a record of the Australian Security Intelligence Organisation;
or
- (b) a record that is claimed to be an exempt record under the *Archives Act 1983* for the reason that it contains information or matter of a kind referred to in paragraph 33(1)(a) or (b) of that Act.

26 Paragraph 17B(2)(b)

Omit “a record of the Australian Security Intelligence Organisation”,
substitute “an exempt security record”.

27 Subsection 19F(1)

Omit “a record of the Australian Security Intelligence Organisation”,
substitute “an exempt security record”.

28 Subsection 19F(3)

Omit “A presidential”, substitute “If the proceeding relates to a record of the Australian Security Intelligence Organisation, a presidential”.

29 Subsection 42(1)

Omit “If”, substitute “Subject to subsection (1A), if”.

30 After subsection 42(1)

Insert:

(1A) If:

- (a) the Tribunal is constituted for the purposes of a proceeding by 3 presidential members in accordance with section 19F;
and

- (b) the proceeding is not in relation to a review of a decision relating to a record of the Australian Security Intelligence Organisation; and
 - (c) the members disagree about a question of law arising in the proceeding;
- the disagreement is to be settled:
- (d) if only one presidential member is a Judge—according to the opinion of that member; or
 - (e) if 2 presidential members are Judges—according to the opinion of the majority of the members.

Archives Act 1983

31 Sections 46 and 48

Repeal the sections.

32 Subsection 50A(1)

Repeal the subsection, substitute:

- (1) This section applies in a proceeding before the Tribunal in relation to review of a decision of the Archives in respect of access to a record that:
 - (a) is claimed to be an exempt record for the reason that it contains information or matter of a kind referred to in paragraph 33(1)(a) or (b); and
 - (b) relates directly or indirectly to:
 - (i) the performance of the functions or duties, or the exercise of the powers, of a body mentioned in paragraph (a) of the definition of *intelligence agency* in subsection 3(1) of the *Inspector-General of Intelligence and Security Act 1986*; or
 - (ii) the performance of an intelligence function (within the meaning of that Act) of a body mentioned in paragraph (b) of that definition; and
 - (c) is not a record of the Inspector-General of Intelligence and Security.

Freedom of Information Act 1982

33 Section 55ZA

Repeal the section, substitute:

55ZA Evidence by Inspector-General of Intelligence and Security— scope

This Division applies in an IC review of a decision in relation to a document that:

- (a) is claimed to be an exempt document under section 33 (national security documents); and
- (b) relates directly or indirectly to:
 - (i) the performance of the functions or duties, or the exercise of the powers, of a body mentioned in paragraph (a) of the definition of ***intelligence agency*** in subsection 3(1) of the *Inspector-General of Intelligence and Security Act 1986*; or
 - (ii) the performance of an intelligence function (within the meaning of that Act) of a body mentioned in paragraph (b) of that definition; and
- (c) is not a document of the Inspector-General of Intelligence and Security.

34 Subsection 60A(1)

Repeal the subsection, substitute:

- (1) This section applies in a proceeding before the Tribunal under this Act in relation to a document that:
 - (a) is claimed to be an exempt document under section 33 (national security documents); and
 - (b) relates directly or indirectly to:
 - (i) the performance of the functions or duties, or the exercise of the powers, of a body mentioned in paragraph (a) of the definition of ***intelligence agency*** in subsection 3(1) of the *Inspector-General of Intelligence and Security Act 1986*; or

- (ii) the performance of an intelligence function (within the meaning of that Act) of a body mentioned in paragraph (b) of that definition; and
- (c) is not a document of the Inspector-General of Intelligence and Security.

35 Application provisions

- (1) The amendments of sections 17B, 19F and 42 of the *Administrative Appeals Tribunal Act 1975* made by this Part apply in relation to a proceeding for the review of a decision made on or after the commencement of this item.
- (2) Despite the repeal of sections 46 and 48 of the *Archives Act 1983* by this Part, those sections continue to apply, in relation to a proceeding for the review of a decision made before the commencement of this item, as if the repeal had not happened.
- (3) Subsection 50A(1) of the *Archives Act 1983*, and subsection 60A(1) of the *Freedom of Information Act 1982*, as inserted by this Part, apply in relation to a proceeding for the review of a decision made on or after the commencement of this item.
- (4) Section 55ZA of the *Freedom of Information Act 1982*, as inserted by this Part, applies in relation to an IC review that starts on or after the commencement of this item.

Part 9—Other amendments

Intelligence Services Act 2001

36 Paragraph 6(1)(e)

Repeal the paragraph, substitute:

- (e) to undertake the following other activities relating to the capabilities, intentions or activities of people or organisations outside Australia:
 - (i) such activities of a general or specific nature as the responsible Minister directs;
 - (ii) activities included in such a class or classes of activity or activities as the responsible Minister directs.

37 After subsection 6(1)

Insert:

- (1A) Without limiting subparagraph (1)(e)(i), a direction given under that subparagraph may specify the purpose or purposes for which an activity or activities are to be undertaken.
- (1B) Without limiting subparagraph (1)(e)(ii), a direction given under that subparagraph may specify the purpose or purposes for which a class or classes of activity or activities are to be undertaken.

38 Subsection 6(2)

Omit “direct ASIS to undertake activities referred to in paragraph (1)(e)”, substitute “give a direction under subparagraph (1)(e)(i) or (ii)”.

39 Subsections 6(3) and (3A)

Omit “paragraph (1)(e)” (wherever occurring), substitute “subparagraph (1)(e)(i) or (ii)”.

40 Section 6A

Omit “paragraph 6(1)(e)”, substitute “subparagraph 6(1)(e)(i) or (ii)”.

41 Section 6A

Omit “undertaken”, substitute “undertaken in accordance with the direction”.

42 Subparagraph 8(1)(a)(ii)

Omit “paragraph 6(1)(e)”, substitute “subparagraph 6(1)(e)(i) or (ii)”.

*[Minister’s second reading speech made in—
House of Representatives on 29 March 2023
Senate on 13 June 2023]*

(46/23)
