





# **Inspector-General of Intelligence and Security and Other Legislation Amendment (Modernisation) Act 2023**

**No. 73, 2023**

**An Act to amend the law relating to the oversight of  
intelligence services, and for related purposes**

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



---

## Contents

1	Short title.....	1
2	Commencement.....	2
3	Schedules.....	3
<b>Schedule 1—Amendments</b>		<b>4</b>
Part 1—Main amendments		4
<i>Inspector-General of Intelligence and Security Act 1986</i>		4
Part 2—Consequential amendments		35
<i>Australian Human Rights Commission Act 1986</i>		35
<i>Australian Security Intelligence Organisation Act 1979</i>		35
<i>Crimes Act 1914</i>		36
<i>Criminal Code Act 1995</i>		37
<i>Income Tax Assessment Act 1997</i>		37
<i>Intelligence Services Act 2001</i>		37
<i>Office of National Intelligence Act 2018</i>		41
<i>Ombudsman Act 1976</i>		41
<i>Privacy Act 1988</i>		41
<i>Public Interest Disclosure Act 2013</i>		41
<i>Surveillance Devices Act 2004</i>		41
<i>Taxation Administration Act 1953</i>		42
<i>Telecommunications Act 1997</i>		42
<i>Telecommunications (Interception and Access) Act 1979</i>		43
<b>Schedule 2—Amendments contingent on the National Anti-Corruption Commission Act</b>		<b>48</b>
Part 1—Amendments that commence after the National Anti-Corruption Commission Act		48
<i>Inspector-General of Intelligence and Security Act 1986</i>		48
<i>National Anti-Corruption Commission Act 2022</i>		48

---

Part 2—Amendments contingent on the National Anti-Corruption Commission Act that might not commence	49
<i>Law Enforcement Integrity Commissioner Act 2006</i>	49
<b>Schedule 3—Application and transitional provisions</b>	50



# **Inspector-General of Intelligence and Security and Other Legislation Amendment (Modernisation) Act 2023**

**No. 73, 2023**

---

---

## **An Act to amend the law relating to the oversight of intelligence services, and for related purposes**

*[Assented to 20 September 2023]*

The Parliament of Australia enacts:

### **1 Short title**

This Act is the *Inspector-General of Intelligence and Security and  
Other Legislation Amendment (Modernisation) Act 2023*.

---

*No. 73, 2023      Inspector-General of Intelligence and Security and Other Legislation  
Amendment (Modernisation) Act 2023      1*

---

## 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>Provisions</b>	<b>Commencement</b>	<b>Date/Details</b>
1. Sections 1 to 3 and anything in this Act not elsewhere covered by this table	The day after this Act receives the Royal Assent.	21 September 2023
2. Schedule 1	The day after this Act receives the Royal Assent.	21 September 2023
3. Schedule 2, Part 1	The later of: (a) immediately after the commencement of the provisions covered by table item 2; and (b) the commencement of Parts 2 to 9 of the <i>National Anti-Corruption Commission Act 2022</i> .  However, the provisions do not commence at all if the event mentioned in paragraph (b) does not occur.	21 September 2023 (paragraph (a) applies)
4. Schedule 2, Part 2	Immediately after the commencement of the provisions covered by table item 2.  However, the provisions do not commence at all if Parts 2 to 9 of the <i>National Anti-Corruption Commission Act 2022</i> commence before that time.	Never commenced
5. Schedule 3	The day after this Act receives the Royal Assent.	21 September 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—Main amendments

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

##### 1 Section 2

Omit “shall come into operation”, substitute “commences”.

##### 2 Subsection 3(1)

Insert:

*APS Code of Conduct* means the rules in section 13 of the *Public Service Act 1999*.

*contracted service provider*, for an IGIS contract, means:

- (a) a person who is a party to the IGIS contract and who is responsible for the provision of services to the Inspector-General under the IGIS contract; or
- (b) a subcontractor for the IGIS contract.

*IGIS contract* means a contract, to which the Inspector-General is a party, under which services are to be, or were to be, provided to the Inspector-General.

*IGIS official* (short for Inspector-General of Intelligence and Security official) means:

- (a) the Inspector-General; or
- (b) any other person covered by subsection 32(1).

*ONI Act employee* means a member of the staff of ONI employed under subsection 33(3) of the *Office of National Intelligence Act 2018*.

*paid work* means work for financial gain or reward (whether as an employee, a self-employed person or otherwise).

##### 3 Subsection 3(1) (definition of *permanent resident*)

Repeal the definition.

---

#### **4 Subsection 3(1)**

Insert:

*Public Service Act ONI employee* means a member of the staff of ONI engaged under the *Public Service Act 1999*.

#### **5 Subsection 3(1) (paragraph (a) of the definition of responsible Minister)**

After “that Act”, insert “, or the part of the Act that establishes the agency or continues the agency in existence”.

#### **6 Subsection 3(1)**

Insert:

*subcontractor*, for an IGIS contract, means a person:

- (a) who is a party to a contract (the *subcontract*):
  - (i) with a contracted service provider for the IGIS contract (within the meaning of paragraph (a) of the definition of contracted service provider); or
  - (ii) with a subcontractor for the IGIS contract (under a previous application of this definition); and
- (b) who is responsible under the subcontract for the provision of services to the Inspector-General, or to a contracted service provider for the IGIS contract, for the purposes (whether direct or indirect) of the IGIS contract.

#### **7 Subsections 6(1) and (2)**

Omit “shall”, substitute “is to”.

#### **8 Before subsection 6(3)**

Insert:

*Consultation requirement*

#### **9 After subsection 6(3)**

Insert:

*Limitation on appointment of Inspector-General*

- (3A) A person must not be appointed as Inspector-General if the person is, or the person's most recent position was, the head or a deputy head (however described) of an intelligence agency.

*Arrangements with States and Territories*

**10 Subparagraph 6AA(a)(ii)**

Repeal the subparagraph, substitute:

- (ii) a person covered by subsection 32(1) of this Act; and

**11 Before subsection 8(1)**

Insert:

*Intelligence agency inquiry functions in relation to ASIO*

**12 Subparagraph 8(1)(a)(v)**

Omit “, being an act or practice referred to the Inspector-General by the Australian Human Rights Commission”.

**13 Paragraph 8(1)(c)**

Omit “in a case where”, substitute “(within the meaning of the *Australian Security Intelligence Organisation Act 1979*) if”.

**14 Subparagraph 8(1)(c)(i)**

Omit “the *Australian Security Intelligence Organisation Act 1979*”, substitute “that Act”.

**15 Paragraph 8(1)(d)**

Omit “where”, substitute “if”.

**16 Before subsection 8(2)**

Insert:

*Intelligence agency inquiry functions in relation to ASIS, AGO or ASD*

**17 Paragraph 8(2)(a)**

After “permanent resident”, insert “(within the meaning of the *Intelligence Services Act 2001*)”.

**18 Subparagraph 8(2)(a)(iv)**

Omit “, being an act or practice referred to the Inspector-General by the Australian Human Rights Commission”.

**19 Before subsection 8(3)**

Insert:

*Intelligence agency inquiry functions in relation to DIO or ONI*

**20 Paragraphs 8(3)(a) and (b)**

Repeal the paragraphs, substitute:

- (a) at the request of the Attorney-General or the responsible Minister, of the Inspector-General’s own motion, or in response to a complaint made to the Inspector-General by a person who is an Australian citizen or a permanent resident, to inquire into any matter that relates to:
  - (i) the compliance by that agency with the laws of the Commonwealth and of the States and Territories; or
  - (ii) the compliance by that agency with directions or guidelines given to that agency by the responsible Minister; or
  - (iii) the propriety of particular activities of that agency; and
- (aa) at the request of the Attorney-General or the responsible Minister, or of the Inspector-General’s own motion, to inquire into any matter that relates to the effectiveness and appropriateness of the procedures of that agency relating to the legality or propriety of the activities of that agency; and
- (b) at the request of the Attorney-General or the responsible Minister, of the Inspector-General’s own motion, or in response to a complaint made to the Inspector-General by a person who is an Australian citizen or a permanent resident,

to inquire into any matter that relates to an act or practice of that agency:

- (i) that is or may be inconsistent with or contrary to any human right; or
  - (ii) that constitutes or may constitute discrimination; or
  - (iii) that is or may be unlawful under the *Age Discrimination Act 2004*, the *Disability Discrimination Act 1992*, the *Racial Discrimination Act 1975* or the *Sex Discrimination Act 1984*; and
- (ba) at the request of the Attorney-General or the responsible Minister, or of the Inspector-General's own motion, to inquire into any matter that relates to the procedures of that agency relating to redress of grievances of employees of that agency; and

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

Insert:

- (3AA) In subsection (3), ***permanent resident*** has the same meaning as in:
- (a) if the agency is DIO—the *Intelligence Services Act 2001*; and
  - (b) if the agency is ONI—the *Office of National Intelligence Act 2018*.

*Intelligence agency inquiry functions in relation to ACIC or the Australian Federal Police*

## **22 Paragraph 8(3A)(h)**

Omit “, referred to the Inspector-General by the Australian Human Rights Commission”.

## **23 Subsection 8(4)**

Repeal the subsection.

## **24 Before subsection 8(5)**

Insert:

*Intelligence agency inquiry functions in relation to complaints  
about employment, contracts and related matters*

**25 Subsection 8(5)**

Omit “or ONI”, substitute “or by a Public Service Act ONI employee”.

**26 Subsection 8(6)**

After “ASIS employee”, insert “, an ONI Act employee”.

**27 Paragraphs 8(6)(a) and (b)**

After “ASIS”, insert “, ONI”.

**28 After paragraph 8(7)(b)**

Insert:

(ba) for an ONI Act employee:

- (i) the Director-General of National Intelligence; or
- (ii) ONI Act employees; or
- (iii) Public Service Act ONI employees; and

**29 Subsection 8(7) (note)**

Repeal the note, substitute:

Note: See also subsection 11(5) for when the Inspector-General may decide not to inquire into a matter referred to in subsection (6) of this section.

**30 At the end of subsection 8(8A)**

Add:

Note: See also subsection 11(6) for when the Inspector-General may decide not to inquire into a matter referred to in subsection (8) of this section.

**31 Before subsection 8(9)**

Insert:

*Functions conferred by other Acts*

**32 Subsection 8A(2)**

Repeal the subsection.

### 33 Subsection 8A(4)

Repeal the subsection, substitute:

- (4) However, paragraph (3)(c) does not apply if:
- (a) the intelligence agency is ASIS, ASD, AGO, DIO or ONI; and
  - (b) the person is not an Australian citizen, or a permanent resident within the meaning of:
    - (i) for ASIS, ASD, AGO or DIO—paragraph (a) of the definition of *permanent resident* in subsection 3(1) of the *Intelligence Services Act 2001*; or
    - (ii) for ONI—paragraph (a) of the definition of *permanent resident* in subsection 4(1) of the *Office of National Intelligence Act 2018*.

### 34 Paragraph 9AA(a)

Repeal the paragraph.

### 35 Paragraph 9AA(b)

Omit “and 8(2)(a)(ii) and paragraphs 8(1)(d) and (3A)(b)”, substitute “, 8(2)(a)(ii) and 8(3)(a)(ii) and paragraphs 8(1)(d) and 8(3A)(e)”.

### 36 Paragraph 9AA(ba)

Omit “8(3A)(f)”, substitute “8(3A)(i)”.

### 37 Subsection 9A(2)

Repeal the subsection, substitute:

- (2) For the purposes of conducting an inspection of an intelligence agency under subsection (1), the Inspector-General or a member of staff assisting the Inspector-General referred to in paragraph 32(1)(a):
- (a) may, at all reasonable times, enter and remain on any premises (including any land or place) (except premises occupied in another country by ASIS); and
  - (b) may, at all reasonable times, enter and remain on any premises (including any land or place) occupied in another country by ASIS if the Director-General of ASIS and the

Inspector-General have made arrangements relating to entry under this section; and

- (c) is entitled to all reasonable facilities and assistance that the head of the agency is capable of providing; and
- (d) is entitled to full and free access at all reasonable times to any information, documents or other property of the agency; and
- (e) may examine, make copies of or take extracts from any information or documents.

**38 Subsection 10(1) (note 1)**

Omit “32AE”, substitute “32AH”.

**39 Subsection 10(2)**

Omit “Where a complaint is made orally to the Inspector-General, the Inspector-General shall”, substitute “If a complaint is made orally to the Inspector-General, the Inspector-General must”.

**40 Before subsection 11(1)**

Insert:

*Requirement to inquire into certain complaints*

**41 Subsection 11(1)**

Omit “Where”, substitute “If”.

**42 Subsection 11(1)**

Omit “shall”, substitute “must”.

**43 Subsections 11(2) and (3)**

Omit “Where”, substitute “If”.

**44 Subsection 11(3)**

Omit “shall”, substitute “must”.

**45 Subsection 11(4)**

Omit “Where”, substitute “If”.

**46 Subsection 11(4A) (note)**

Omit “32AD”, substitute “32AG”.

**47 Subsection 11(5)**

Omit “shall”, substitute “must”.

**48 Paragraph 11(5)(a)**

After “ASIS employees”, insert “, ONI Act employees”.

**49 Section 12**

Repeal the section, substitute:

**12 Procedure if complaint not pursued**

If a person makes a complaint in relation to action taken by an intelligence agency that the Inspector-General decides not to inquire into, or not to inquire further into, the Inspector-General must:

- (a) take reasonable steps to notify the person in writing of the decision; and
- (b) notify the responsible Minister and the head of the agency in writing of the decision.

**50 Subsection 13(2)**

Omit “shall”, substitute “must”.

**51 Before section 14**

Insert:

**Division 2A—Preliminary inquiries**

**52 Before subsection 14(1)**

Insert:

*Making preliminary inquiries into a complaint*

**53 Subsection 14(1)**

Omit “Where”, substitute “If”.

---

**54 Subsection 14(1)**

Omit “make inquiries”, substitute “make preliminary inquiries”.

**55 At the end of subsection 14(1)**

Add:

Note: After making preliminary inquiries in relation to a complaint, see subsections 11(2) to (6) for determining whether to pursue further inquiry.

**56 After subsection 14(1)**

Insert:

*Making own motion preliminary inquiries*

**57 Subsection 14(2)**

Omit “make inquiries”, substitute “make preliminary inquiries”.

**58 At the end of section 14**

Add:

*Determining that further inquiry is not warranted in relation to own motion preliminary inquiries*

- (3) After making preliminary inquiries of the head of the intelligence agency under subsection (2), the Inspector-General may determine that, having regard to all the circumstances of the case, an inquiry, or further inquiry, into the action is not warranted.

Note: For reports relating to preliminary inquiries, see section 25B.

**59 Before section 15**

Insert:

**Subdivision A—Obligations before commencing an inquiry**

**60 Subsection 15(1)**

Omit “shall”, substitute “must”.

**61 Section 16**

Repeal the section.

**62 Before section 17**

Insert:

**Subdivision B—Conduct of inquiries**

**63 Before subsection 17(1)**

Insert:

*Conduct of inquiries*

**64 Subsection 17(1)**

Omit “shall”, substitute “must”.

**65 Subsection 17(4)**

Omit “shall not make a report”, substitute “must not make a report”.

**66 Subsection 17(4)**

Omit “, before completing the inquiry,”.

**67 Subsection 17(5)**

Omit “Where”, substitute “If”.

**68 Subsection 17(5)**

Omit “Inspector-General shall”, substitute “Inspector-General must”.

**69 Subsection 17(6)**

Omit “Where”, substitute “If”.

**70 Before subsection 17(7)**

Insert:

*Discussions and consultation with Ministers or Prime Minister*

**71 Subsections 17(7) and (8)**

Omit “before completing”, substitute “while conducting”.

**72 Subsection 17(9)**

Omit “shall not make a report”, substitute “must not make a report”.

**73 Subsection 17(10)**

Repeal the subsection.

**74 After section 17**

Insert:

**17A Obligation when evidence of breach of duty or misconduct**

- (1) This section applies if, at any time before, during or after conducting:
- (a) an inspection under section 9A; or
  - (b) a preliminary inquiry under section 14, or any other action taken by the Inspector-General for the purpose of deciding whether to inquire into a matter; or
  - (c) an inquiry under this Act;
- the Inspector-General is satisfied on reasonable grounds that there is evidence that a person who is a member of a Commonwealth agency has been guilty of a breach of duty or of misconduct.

*Notifying responsible Minister, agency head and Public Service Commissioner*

- (2) If the Inspector-General is satisfied on reasonable grounds that the evidence is of sufficient weight to justify the Inspector-General doing so, the Inspector-General must bring the evidence to the notice of:
- (a) either:
    - (i) if the person is the head of that agency—the responsible Minister; or
    - (ii) in any other case—the head of that agency; and
  - (b) without limiting paragraph (a), if:

- (i) the Commonwealth agency is an Agency within the meaning of the *Public Service Act 1999*; and
  - (ii) the person is the Agency Head (within the meaning of that Act) of the agency; and
  - (iii) the breach of duty or misconduct could constitute a contravention of the APS Code of Conduct;
- the Australian Public Service Commissioner appointed under that Act.

**75 Before section 18**

Insert:

**Subdivision C—General powers in relation to inquiries**

**76 Before subsection 18(1)**

Insert:

*Requiring information or documents*

**77 Subsection 18(1)**

Omit “Where”, substitute “If”.

**78 At the end of subsection 18(1)**

Add:

Note: Failure to comply with a notice is an offence: see subsection (7).

**79 Subsection 18(2)**

Omit “Where”, substitute “If”.

**80 Paragraph 18(2)(c)**

Omit “shall”, substitute “must”.

**81 Before subsection 18(3)**

Insert:

*Requiring attendance*

**82 Subsection 18(3)**

Omit “Where”, substitute “If”.

**83 At the end of subsection 18(3)**

Add:

Note: Failure to comply with a notice is an offence: see subsection (7).

**84 At the end of subsection 18(4)**

Add:

Note 1: Failure to take an oath or make an affirmation is an offence: see subsection (7).

Note 2: This means that a hearing is a judicial proceeding for the purposes of Part III of the *Crimes Act 1914*, which creates various offences in relation to judicial proceedings.

**85 Before subsection 18(6)**

Insert:

*Self-incrimination and legal professional privilege*

**86 Paragraph 18(6)(b)**

After “agency”, insert “, or would disclose any other information that is, or may be, the subject of a claim of legal professional privilege by the Commonwealth or a Commonwealth agency”.

**87 Paragraph 18(6)(ca)**

After “137.1”, insert “, 137.2 (false or misleading information and documents), 145.1 (using forged document) or 149.1 (obstruction of Commonwealth public officials)”.

**88 After paragraph 18(6)(ca)**

Insert:

(cb) an offence against Division 3 of Part III of the *Crimes Act 1914* (offences relating to evidence and witnesses) that relates to this section; or

**89 After subsection 18(6)**

Insert:

- (6A) The fact that a person is not excused under subsection (6) from giving information, producing a document or answering a question does not otherwise affect a claim of legal professional privilege that anyone may make in relation to that information, document or answer.

Note: Legal professional privilege is also not waived in relation to information or documents provided voluntarily (see section 32AC).

*Offence for failing to comply*

**90 Paragraph 18(7)(c)**

Omit “a natural person”, substitute “an individual”.

**91 Before subsection 18(9)**

Insert:

*Immunity from other penalties*

**92 Section 19**

Omit “The Inspector-General may”, substitute “(1) The Inspector-General may (subject to subsection (2))”.

**93 At the end of section 19**

Add:

- (2) The Inspector-General may enter a place occupied in another country by ASIS only if the Director-General of ASIS and the Inspector-General have made arrangements relating to entry under this section.

**94 Section 20**

Repeal the section.

**95 Before section 21**

Insert:

## **20A Reports under this Act and other Acts**

In addition to any reports that the Inspector-General is required or authorised to prepare under any other Act, the Inspector-General must prepare reports under this Act in accordance with this Division.

Note: The Inspector-General prepares reports under subsections 9B(8A) and 9C(6) (oversight of authorisations in emergencies) of the *Intelligence Services Act 2001*.

## **96 Before subsection 21(1)**

Insert:

*Draft reports to be prepared and generally given to agency head*

## **97 Subsection 21(1)**

After “relating to a Commonwealth agency”, insert “(other than a preliminary inquiry under section 14)”.

## **98 At the end of subsection 21(1)**

Add:

Note: To avoid doubt, the Inspector-General may satisfy requirements under this subsection before completing the inquiry.

## **99 After subsection 21(1AA)**

Insert:

*Draft reports on matters directly relating to agency head*

## **100 Before subsection 21(1C)**

Insert:

*Relationship with section 17 (conduct of inquiries)*

## **101 At the end of subsection 21(1C)**

Add “(conduct of inquiries)”.

## **102 After subsection 21(1C)**

Insert:

*Including relevant comments in final report*

**103 Subsection 21(2)**

Omit “Where”, substitute “If”.

**104 Subsection 21(2)**

Omit “shall”, substitute “must”.

**105 Before subsection 22(1)**

Insert:

*Reports to be prepared and given to agency head or other responsible person*

**106 Subsection 22(1)**

After “relating to a Commonwealth agency”, insert “(other than a preliminary inquiry under section 14)”.

**107 At the end of subsection 22(1)**

Add:

Note 1: To avoid doubt, the Inspector-General may satisfy requirements under this subsection before completing the inquiry.

Note 2: A copy of the report may be given to the Parliamentary Joint Committee on Intelligence and Security under subsection 185D(3) or 185E(1) of the *Telecommunications (Interception and Access) Act 1979* if the report relates to an authorisation intended to identify a media source or to retained data.

**108 After subsection 22(1A)**

Insert:

*Report to include reasons and compensation recommendation*

**109 Subsection 22(2)**

Omit “shall”, substitute “must”.

**110 After subsection 22(2)**

Insert:

---

*Tax information not to be disclosed*

**111 After subsection 22(3)**

Insert:

*Copies for Ministers*

**112 Subsections 23(1) and (2)**

Repeal the subsections, substitute:

- (1) After conducting an inquiry under this Act into a complaint in respect of action taken by an intelligence agency (other than a preliminary inquiry under section 14), the Inspector-General must (subject to subsection (2)) take reasonable steps to give a written response relating to the inquiry to the complainant, unless the Inspector-General is satisfied on reasonable grounds that doing so will prejudice security, the defence of Australia or Australia's relations with other countries.
- (2) The Inspector-General must not give the response until the head of the relevant agency and the Inspector-General have agreed that the terms of the proposed response will not prejudice:
  - (a) security, the defence of Australia or Australia's relations with other countries; or
  - (b) law enforcement operations, including methodologies and investigative techniques; or
  - (c) the privacy of individuals; or
  - (d) confidential commercial information; or
  - (e) the fair trial of a person or the impartial adjudication of a matter.

**113 Subsection 24(1)**

Omit "Where", substitute "If".

**114 Subsection 24(1)**

Omit "shall", substitute "must".

**115 Subsection 24(2)**

Omit "Where", substitute "If".

---

**116 Subsection 25(1)**

Omit “shall”, substitute “must”.

**117 Section 25A**

Omit “may report on the inspection to”, substitute “may prepare a report on the inspection (which may include the Inspector-General’s conclusions and recommendations) for”.

**118 At the end of Part II**

Add:

**25B Reports relating to preliminary inquiries**

If the Inspector-General makes inquiries of the head of an intelligence agency under section 14 (preliminary inquiries), the Inspector-General may prepare a report on the inquiry (which may include the Inspector-General’s conclusions and recommendations) for the responsible Minister or the head of the relevant agency.

Note: The Inspector-General may only disclose tax information, financial transaction reports information or AUSTRAC information as permitted under Subdivision 355-C in Schedule 1 to the *Taxation Administration Act 1953* or Part 11 of the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006*.

**119 Subsection 27(1)**

Omit “shall” (wherever occurring), substitute “is to”.

**120 Subsection 27(2)**

Omit “shall”, substitute “is to”.

**121 Subsection 30(1)**

Repeal the subsection, substitute:

- (1) The Governor-General may terminate the appointment of the Inspector-General:
  - (a) for misbehaviour; or
  - (b) if the Inspector-General is unable to perform the duties of the Inspector-General’s office because of physical or mental incapacity.

**122 Paragraph 30(2)(b)**

Repeal the paragraph.

**123 Subsection 30(2)**

Omit “shall”, substitute “must”.

**124 After subsection 30(2)**

Insert:

- (2A) The Governor-General may terminate the appointment of the Inspector-General if:
- (a) the Inspector-General holds office on a full-time basis; and
  - (b) the Inspector-General:
    - (i) engages, except with the approval of the Attorney-General, in paid work outside the duties of the Inspector-General’s office; or
    - (ii) is absent from duty, except on leave, for 14 consecutive days or for 28 days in any period of 12 months.

**125 Subsection 30(3)**

Omit “and (2)”, substitute “, (2) and (2A)”.

**126 At the end of subsection 32(1)**

Add:

- ; and (c) a consultant or contractor engaged to assist the Inspector-General under section 32AAA or 32AAB; and
- (d) a person who is made available by another body or organisation to assist the Inspector-General under section 32AAD.

**127 Subsection 32(3)**

Omit “section 32AA”, substitute “subsection 32AA(1)”.

**128 After section 32**

Insert:

### **32AAA Consultants**

- (1) The Inspector-General may, on behalf of the Commonwealth, engage as consultants persons having suitable qualifications and experience to assist in the performance of the Inspector-General's functions.
- (2) The engagement of a consultant must be by written agreement.
- (3) The terms and conditions of engagement are those that the Inspector-General determines in writing.

### **32AAB Contracted service providers**

- (1) The Inspector-General may, on behalf of the Commonwealth, engage a contracted service provider to assist in the performance of the Inspector-General's functions.
- (2) The engagement of a contracted service provider must be by written agreement.
- (3) The terms and conditions of engagement are those that the Inspector-General determines in writing.

### **32AAC Secondment of employees of Inspector-General**

#### *Secondment*

- (1) The Inspector-General may, in writing, arrange for an employee of the Inspector-General to be seconded for a specified period to a body or organisation whether within or outside Australia.

#### *Termination of secondment*

- (2) The Inspector-General may at any time, by notice given to the body or organisation to which an employee of the Inspector-General is seconded under subsection (1), terminate the secondment.

### **32AAD Secondment of persons to the Inspector-General**

- (1) The Inspector-General may, by written agreement with a body or organisation (whether within or outside Australia), arrange for a
-

person who is an officer, employee or other member of staff of the body or organisation to be made available to the Inspector-General to perform services in connection with the performance of its functions or the exercise of its powers.

- (2) The terms and conditions (including remuneration and allowances) applicable to a person performing services under an agreement are those specified in the agreement.

### **129 After subsection 32AA(1)**

Insert:

- (1A) The Inspector-General may, by writing signed by the Inspector-General, delegate all or any of the Inspector-General's functions or powers under any other provision of this Act (other than subsection 32(3)), or any other Act, to a member of staff assisting the Inspector-General engaged under the *Public Service Act 1999* who the Inspector-General believes has appropriate expertise relating to the function or power delegated.

### **130 Subsection 32AA(2)**

After “a delegation”, insert “under subsection (1) or (1A)”.

### **131 Part IIIA**

Repeal the Part, substitute:

## **Part IIIA—Relationships with other agencies and information sharing**

### **Division 1—Avoiding duplication of oversight**

#### **32AB Avoiding duplication of oversight**

- (1) For the purpose of avoiding duplicating oversight of matters by both:
- (a) the Inspector-General; and
  - (b) an integrity body or the Auditor-General;
- the Inspector-General must have regard to the functions of those bodies and the Auditor-General.

- (2) The Inspector-General may consult an integrity body, or the Auditor-General, in relation to a particular matter if the Inspector-General considers it appropriate to do so for the purpose of avoiding more than one inquiry being conducted into the matter.

## **Division 2—Sharing information with the Inspector-General**

### **32AC Protection for persons providing information voluntarily to the Inspector-General**

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

*Person not liable to penalties or prosecution under other Commonwealth laws*

- (2) The person is not (subject to subsections (5) and (6)) liable to a penalty or to be prosecuted for an offence under a provision of any other law of the Commonwealth for providing or making available the information or documents.

*Use immunity*

- (3) The information or documents, and the providing or making available of the information or documents, are not (subject to subsection (5)) admissible in evidence against the person in any court or in any proceedings before a person authorised to hear evidence.

*Legal professional privilege*

- (4) The providing or making available of the information or documents does not affect any legal professional privilege that is, or may be, claimed by any person in relation to the information or documents.

*Exceptions*

- (5) Subsections (2) and (3) do not apply in relation to proceedings for an offence against:
- (a) section 137.1 or 137.2 (false or misleading information and documents), 145.1 (using forged document) or 149.1 (obstructing Commonwealth officials) of the *Criminal Code*, to the extent that that offence relates to this Act; or
  - (b) Division 3 of Part III of the *Crimes Act 1914* (offences relating to evidence and witnesses), to the extent that that offence relates to this Act; or
  - (c) section 6 of the *Crimes Act 1914*, or section 11.1, 11.4 or 11.5 of the *Criminal Code*, in relation to an offence referred to in paragraph (a) or (b) of this subsection.
- (6) Subsection (2) does not apply if the provision referred to in that subsection:
- (a) is enacted after the commencement of this section; and
  - (b) is expressed to have effect despite this section.

Note: This section applies subject to section 90 of the *Law Enforcement Integrity Commissioner Act 2006*.

**32AD Security of Commonwealth agency information and documents**

- (1) This section applies if:
- (a) the Inspector-General requires access to information or documents in the possession of a Commonwealth agency for the purposes of conducting:
    - (i) an inspection under section 9A; or
    - (ii) a preliminary inquiry under section 14, or any other action taken by the Inspector-General for the purpose of deciding whether to inquire into a matter; or

- (iii) an inquiry under Division 3 of Part II; and
  - (b) the information or documents have a national security or other protective security classification; and
  - (c) the Inspector-General intends to do any of the following for the purposes of exercising powers or performing functions or duties as the Inspector-General:
    - (i) remove the documents from the possession of the agency;
    - (ii) make copies or take extracts from the information or documents;
    - (iii) examine or otherwise make use of the information or documents.
- (2) The Inspector-General must make arrangements to protect from unauthorised disclosure:
- (a) the information, documents, copies or extracts; and
  - (b) any other information obtained from the documents, copies or extracts;
- taking into account any advice provided by the head of the relevant agency.

### **32AE Authorisation for the purposes of the *Privacy Act 1988***

- (1) This section applies for the purposes of the *Privacy Act 1988*, including as it applies in relation to a service provider under section 187LA of the *Telecommunications (Interception and Access) Act 1979*.
- (2) A person is authorised to give or make available personal information (within the meaning of the *Privacy Act 1988*) to an IGIS official for the purpose of the IGIS official performing a function or duty or exercising a power as an IGIS official.

## **Division 3—Information sharing by the Inspector-General**

### **32AF Information sharing with integrity bodies**

- (1) The Inspector-General may share information or documents with an integrity body (the *receiving body*) if:
-

- (a) the information or documents are obtained by an IGIS official in the course of exercising powers, or performing functions or duties, as an IGIS official; and
  - (b) the information or documents are relevant to the receiving body's functions; and
  - (c) the Inspector-General is satisfied on reasonable grounds that the receiving body has satisfactory arrangements in place for protecting the information or documents.
- (2) To avoid doubt, the Inspector-General may share information or documents with an integrity body whether or not the Inspector-General is transferring a complaint or part of a complaint to the integrity body.
- (3) Without limiting paragraph (1)(c) or subsection 32AD(2), the Inspector-General may make arrangements with the head of an intelligence agency in relation to protecting information or documents provided to the Inspector-General by the agency.

### **32AG Transferring complaints to other integrity bodies**

If the Inspector-General decides under subsection 11(4A) not to inquire into, or not to inquire further into, a complaint or part of a complaint in relation to action taken by an intelligence agency, the Inspector-General may transfer all or part of the complaint to the integrity body for the complaint.

Note: The complaint is taken to have been made under the Act establishing the integrity body (see sections 46PZ of the *Australian Human Rights Commission Act 1986*, 23A of the *Law Enforcement Integrity Commissioner Act 2006*, 5B of the *Ombudsman Act 1976* and 49B of the *Privacy Act 1988*).

### **32AH Complaints transferred by integrity bodies**

For the purposes of this Act, a complaint is taken to have been made to the Inspector-General under this Act if all or part of the complaint is transferred (however described) to the Inspector-General by an integrity body.

Note: Complaints may be transferred to the Inspector-General under subsections 11(3) and 20(4C) of the *Australian Human Rights Commission Act 1986*, 6F(3) of the *Ombudsman Act 1976* and 50(2) of the *Privacy Act 1988*.

**132 Subsection 32A(1)**

Omit “which are issued on or after the day on which the *Prime Minister and Cabinet Legislation Amendment Act 1991* commences”.

**133 Subsection 32A(5)**

Omit “Where”, substitute “If”.

**134 Subsection 32B(1)**

After “AGO”, insert “, DIO”.

**135 Subsection 33(2)**

Omit “Where”, substitute “If”.

**136 Before subsection 34(1)**

Insert:

*Offence—unauthorised disclosure of information acquired under this Act*

**137 Subsection 34(1)**

Omit “a person who is, or has at any time been, the Inspector-General or a member of the staff of the Inspector-General or who is acting, or has at any time acted, as the Inspector-General or as a member of the staff of the Inspector-General shall”, substitute “a person who is an IGIS official, or former IGIS official, must”.

**138 Paragraphs 34(1)(a) and (b)**

After “information”, insert “or document”.

**139 Before subsection 34(1AA)**

Insert:

*Offence—unauthorised disclosure of information acquired under the Freedom of Information Act 1982*

**140 Subsection 34(1AA)**

Omit “a person who is, or has at any time been, the Inspector-General or a member of the staff of the Inspector-General or who is acting, or has at any time acted, as the Inspector-General or as a member of the staff of the Inspector-General”, substitute “a person who is an IGIS official, or former IGIS official,”.

**141 Paragraphs 34(1AA)(a) and (b)**

After “information”, insert “or document”.

**142 Before subsection 34(1AB)**

Insert:

*Offence—unauthorised disclosure of information acquired under the Archives Act 1983*

**143 Subsection 34(1AB)**

Omit “a person who is, or has at any time been, the Inspector-General or a member of the staff of the Inspector-General or who is acting, or has at any time acted, as the Inspector-General or as a member of the staff of the Inspector-General”, substitute “a person who is an IGIS official, or former IGIS official,”.

**144 Paragraphs 34(1AB)(a) and (b)**

After “information”, insert “or document”.

**145 Before subsection 34(1A)**

Insert:

*Exception*

**146 Paragraph 34(1A)(a)**

After “information”, insert “or document”.

**147 Before subsection 34(2)**

Insert:

*Dealing with offence as indictable or summary offence*

**148 Subsection 34(4)**

Omit “Where”, substitute “If”.

**149 Before subsection 34(5)**

Insert:

*Limitation on disclosures to courts*

**150 Subsection 34(5)**

Omit “If a person is prohibited by this section from disclosing information, the person”, substitute “A person who is an IGIS official, or former IGIS official,”.

**151 Subsection 34(5)**

Omit “except where”, substitute “except if”.

**152 After subsection 34(5)**

Insert:

*Section generally to apply despite other laws*

(5A) This section applies despite any other provision of a law of the Commonwealth unless that provision manifests a clear intention to apply despite this section (for example, by explicitly authorising or requiring an IGIS official to use or disclose information).

Note: A requirement in a law of the Commonwealth that applies generally to an APS employee, and does not refer explicitly to an IGIS official, would not manifest a clear intention to apply despite this section.

(5B) This section applies despite any provision of a law of a State or Territory.

**153 Before subsection 34(6)**

Insert:

---

*Definitions for this section*

**154 Subsection 34A(4)**

Omit “a staff member or former staff member”, substitute “an IGIS official or former IGIS official”.

**155 Subsection 34A(5)**

Omit “staff member or former staff member”, substitute “IGIS official or former IGIS official”.

**156 Paragraph 34A(5)(a)**

Omit “a staff member”, substitute “an IGIS official”.

**157 Subsection 34A(6)**

Omit “a staff member or a former staff member”, substitute “an IGIS official or a former IGIS official”.

**158 Subsection 34A(7) (definition of *staff member*)**

Repeal the definition.

**159 Section 34B**

Repeal the section.

**160 Before subsection 35(2)**

Insert:

*Contents of annual report*

**161 Subsection 35(2)**

Omit “shall”, substitute “must”.

**162 Paragraph 35(2AA)(b)**

Omit “section 32AA”, substitute “subsection 32AA(1)”.

**163 After subsection 35(2C)**

Insert:

**Schedule 1** Amendments  
**Part 1** Main amendments

---

(2D) The Inspector-General may include in a report referred to in subsection (2) the Inspector-General's comments on any other activity of the Inspector-General during the period to which the report relates.

*Report to be given to the Leader of the Opposition*

**164 Before subsection 35(4)**

Insert:

*Tabling of annual report*

**165 Subsection 35(4)**

Omit "shall", substitute "must".

## **Part 2—Consequential amendments**

### *Australian Human Rights Commission Act 1986*

#### **166 Subsection 20(1) (note)**

Omit “32AD”, substitute “32AG”.

#### **167 Subsection 46P(1) (note 2)**

Omit “32AD”, substitute “32AG”.

#### **168 Subsection 46PZ(1)**

Omit “32AD”, substitute “32AG”.

### *Australian Security Intelligence Organisation Act 1979*

#### **169 Section 4 (paragraph (b) of the definition of *IGIS official*)**

Omit “a member of the staff referred to in”, substitute “any other person covered by”.

#### **170 Subsection 18(2B)**

Repeal the subsection, substitute:

*Exception—IGIS officials*

(2B) Subsection (2) does not apply if the person communicates the information or matter to an IGIS official for the purpose of the IGIS official exercising a power, or performing a function or duty, as an IGIS official.

Note: A defendant bears an evidential burden in relation to the matter in subsection (2B) (see subsection 13.3(3) of the *Criminal Code*).

#### **171 Subsection 18A(2A)**

Repeal the subsection, substitute:

*Exception—IGIS officials*

- (2A) Subsection (1) does not apply if the person deals with the record for the purpose of an IGIS official exercising a power, or performing a function or duty, as an IGIS official.

Note: A defendant bears an evidential burden in relation to the matter in subsection (2A) (see subsection 13.3(3) of the *Criminal Code*).

**172 Subsection 18B(2A)**

Repeal the subsection, substitute:

*Exception—IGIS officials*

- (2A) Subsection (1) does not apply if the person makes the record for the purpose of an IGIS official exercising a power, or performing a function or duty, as an IGIS official.

Note: A defendant bears an evidential burden in relation to the matter in subsection (2A) (see subsection 13.3(3) of the *Criminal Code*).

**173 Paragraph 35P(3)(f)**

Repeal the paragraph, substitute:

- (f) to an IGIS official for the purpose of exercising powers, or performing functions or duties, as an IGIS official; or

**174 Paragraph 35P(3)(g)**

Omit “under that Act”, substitute “as an IGIS official”.

**175 Subsection 35P(3) (note)**

Repeal the note, substitute:

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

***Crimes Act 1914***

**176 Subsection 3(1)**

Insert:

***IGIS official*** (short for Inspector-General of Intelligence and Security official) means:

---

- (a) the Inspector-General of Intelligence and Security; or
- (b) any other person covered by subsection 32(1) of the *Inspector-General of Intelligence and Security Act 1986*.

**177 After paragraph 15LC(4)(d)**

Insert:

- (db) for the purpose of an IGIS official exercising a power, or performing a function or duty, as an IGIS official; or

***Criminal Code Act 1995***

**178 Subparagraph 122.5(3)(a)(i) of the *Criminal Code***

Omit “a person engaged or employed to assist the Inspector-General as described in”, substitute “a person covered by”.

***Income Tax Assessment Act 1997***

**179 Subsection 995-1(1)**

Insert:

***IGIS official*** (short for Inspector-General of Intelligence and Security official) means:

- (a) the Inspector-General of Intelligence and Security; or
- (b) any other person covered by subsection 32(1) of the *Inspector-General of Intelligence and Security Act 1986*.

***Intelligence Services Act 2001***

**180 Subsection 3(1) (paragraph (b) of the definition of *IGIS official*)**

Omit “a member of the staff referred to in”, substitute “a person covered by”.

**181 Subsections 39(3), 39A(3), 40(3) and 40B(3)**

Repeal the subsections, substitute:

*Exception—IGIS officials*

- (3) Subsection (1) does not apply if the person communicates the information or matter to an IGIS official for the purpose of the IGIS official exercising a power, or performing a function or duty, as an IGIS official.

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

**182 Subsection 40C(2A)**

Repeal the subsection, substitute:

*Exception—IGIS officials*

- (2A) Subsection (1) does not apply if the person deals with the record for the purpose of an IGIS official exercising a power, or performing a function or duty, as an IGIS official.

Note: A defendant bears an evidential burden in relation to the matter in subsection (2A): see subsection 13.3(3) of the *Criminal Code*.

**183 Subsection 40D(2A)**

Repeal the subsection, substitute:

*Exception—IGIS officials*

- (2A) Subsection (1) does not apply if the person makes the record for the purpose of an IGIS official exercising a power, or performing a function or duty, as an IGIS official.

Note: A defendant bears an evidential burden in relation to the matter in subsection (2A): see subsection 13.3(3) of the *Criminal Code*.

**184 Subsection 40E(2A)**

Repeal the subsection, substitute:

*Exception—IGIS officials*

- (2A) Subsection (1) does not apply if the person deals with the record for the purpose of an IGIS official exercising a power, or performing a function or duty, as an IGIS official.

Note: A defendant bears an evidential burden in relation to the matter in subsection (2A): see subsection 13.3(3) of the *Criminal Code*.

### **185 Subsection 40F(2A)**

Repeal the subsection, substitute:

*Exception—IGIS officials*

(2A) Subsection (1) does not apply if the person makes the record for the purpose of an IGIS official exercising a power, or performing a function or duty, as an IGIS official.

Note: A defendant bears an evidential burden in relation to the matter in subsection (2A): see subsection 13.3(3) of the *Criminal Code*.

### **186 Subsection 40G(2A)**

Repeal the subsection, substitute:

*Exception—IGIS officials*

(2A) Subsection (1) does not apply if the person deals with the record for the purpose of an IGIS official exercising a power, or performing a function or duty, as an IGIS official.

Note: A defendant bears an evidential burden in relation to the matter in subsection (2A): see subsection 13.3(3) of the *Criminal Code*.

### **187 Subsection 40H(2A)**

Repeal the subsection, substitute:

*Exception—IGIS officials*

(2A) Subsection (1) does not apply if the person makes the record for the purpose of an IGIS official exercising a power, or performing a function or duty, as an IGIS official.

Note: A defendant bears an evidential burden in relation to the matter in subsection (2A): see subsection 13.3(3) of the *Criminal Code*.

### **188 Subsection 40L(2A)**

Repeal the subsection, substitute:

*Exception—IGIS officials*

- (2A) Subsection (1) does not apply if the person deals with the record for the purpose of an IGIS official exercising a power, or performing a function or duty, as an IGIS official.

Note: A defendant bears an evidential burden in relation to the matter in subsection (2A): see subsection 13.3(3) of the *Criminal Code*.

**189 Subsection 40M(2A)**

Repeal the subsection, substitute:

*Exception—IGIS officials*

- (2A) Subsection (1) does not apply if the person makes the record for the purpose of an IGIS official exercising a power, or performing a function or duty, as an IGIS official.

Note: A defendant bears an evidential burden in relation to the matter in subsection (2A): see subsection 13.3(3) of the *Criminal Code*.

**190 Section 41**

Before “A”, insert “(1)”.

**191 At the end of section 41**

Add:

*Exception—IGIS officials*

- (2) Paragraph (1)(a) does not apply if the person identifies the person to an IGIS official, for the purpose of the IGIS official exercising a power, or performing a function or duty, as an IGIS official.

Note: A defendant bears an evidential burden in relation to the matter in subsection (2): see subsection 13.3(3) of the *Criminal Code*.

**192 Subsection 41B(3) (at the end of the definition of information offence provision)**

Add “or paragraph 41(1)(a)”.

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

**193 Subsection 4(1) (paragraph (b) of the definition of  
*Inspector-General of Intelligence and Security official*  
or *IGIS official*)**

Omit “a member of the staff referred to in”, substitute “a person covered by”.

***Ombudsman Act 1976***

**194 Section 5B**

Omit “32AD”, substitute “32AG”.

***Privacy Act 1988***

**195 Section 49B**

Omit “32AD”, substitute “32AG”.

***Public Interest Disclosure Act 2013***

**196 Section 34 (table item 1, column 2, paragraph (c))**

Before “if”, insert “except if paragraph (ca) applies,”.

**197 Paragraph 69(3)(b)**

Omit “who is a member of the staff referred to in”, substitute “covered by”.

**198 Subsection 77(3)**

Omit “a member of staff mentioned in section 32”, substitute “a person covered by subsection 32(1)”.

***Surveillance Devices Act 2004***

**199 At the end of subsection 45(5)**

Add:

- ; (l) an IGIS official exercising powers, or performing functions or duties, as an IGIS official.

### ***Taxation Administration Act 1953***

#### **200 Section 355-185 in Schedule 1**

Repeal the section, substitute:

#### **355-185 Exception—on-disclosure to IGIS officials**

- (1) Section 355-155 does not apply if:
- (a) the entity is an officer of an \*Australian government agency; and
  - (b) the record is made for, or the disclosure is to, an \*IGIS official; and
  - (c) the record or disclosure is for the purposes of the IGIS official performing functions or duties, or exercising powers, as an IGIS official.

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

- (2) Section 355-155 does not apply if:
- (a) the entity is an \*IGIS official; and
  - (b) the information was acquired by the entity under subsection (1) or this subsection; and
  - (c) the record or disclosure is for the purposes of the IGIS official performing functions or duties, or exercising powers, as an IGIS official.

### ***Telecommunications Act 1997***

#### **201 Section 7**

Insert:

***IGIS official*** (short for Inspector-General of Intelligence and Security official) means:

- (a) the Inspector-General of Intelligence and Security; or

(b) any other person covered by subsection 32(1) of the  
*Inspector-General of Intelligence and Security Act 1986*.

**202 Subsection 315H(1)**

Omit “either or both”, substitute “any”.

**203 After paragraph 315H(1)(b)**

Insert:

; (c) the purpose of an IGIS official exercising a power, or  
performing a function or duty, as an IGIS official.

**204 Section 317B (definition of *IGIS official*)**

Repeal the definition.

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

**205 Subsection 63AB(3)**

Repeal the subsection, substitute:

*Communications etc. for the purposes of integrity body officials*

- (3) A person may:
- (a) communicate information referred to in subsection (4) to a person; or
  - (b) make use of, or make a record of, that information;
- in connection with:
- (c) the performance by an Ombudsman official or IGIS official of the official’s functions or duties; or
  - (d) the exercise by an Ombudsman official or IGIS official of the official’s powers.

**206 Subsection 63AB(4)**

Repeal the subsection, substitute:

- (4) The information that may be communicated, used or recorded under subsection (3) is:
- (a) general computer access intercept information; or

- (b) information that was obtained by intercepting a communication passing over a telecommunications system if:
  - (i) the interception was purportedly for the purposes of doing a thing specified in a general computer access warrant; and
  - (ii) the interception was not authorised by the general computer access warrant.

**207 Subsection 63AB(5)**

Repeal the subsection, substitute:

- (5) Despite subsections 13.3(2) and (3) of the *Criminal Code*, in a prosecution for an offence against section 63 of this Act, an Ombudsman official does not bear an evidential burden in relation to the matters in subsection (3) of this section.

Note: An IGIS official also does not bear an evidential burden in relation to the matters in subsection (3) of this section (see section 34C of the *Inspector-General of Intelligence and Security Act 1986*).

**208 Subsection 63AB(6)**

Repeal the subsection.

**209 Section 64 (heading)**

Omit “or Inspector-General’s”.

**210 Subsection 64(1)**

Omit “or the performance by the Inspector-General of Intelligence and Security of his or her functions”.

**211 Subsection 64(2)**

Repeal the subsection, substitute:

- (2) The Director-General of Security, an ASIO employee or ASIO affiliate, in connection with the performance by the Organisation of its functions, may communicate to another such person, make use of, or make a record of, foreign intelligence information.

**212 After section 64**

Insert:

---

#### **64A Dealing in connection with Inspector-General's functions**

- (1) A person may, in connection with an IGIS official exercising a power, or performing a function or duty, as an IGIS official, communicate to another person, make use of, or make a record of, the following:
  - (a) information obtained by intercepting a communication passing over a telecommunications system (whether or not that information is lawfully intercepted information);
  - (b) interception warrant information.
- (2) This section applies despite any other provision of this Part.

#### **213 Subsection 73(1)**

Omit "section 67", substitute "section 64A or 67".

#### **214 After section 139**

Insert:

#### **139AA Dealing in connection with Inspector-General's functions**

- (1) A person may, in connection with an IGIS official exercising a power, or performing a function or duty, as an IGIS official, communicate to another person, make use of, or make a record of, the following:
  - (a) lawfully accessed information;
  - (b) information obtained by accessing a stored communication (whether or not that information is lawfully accessed information);
  - (c) preservation notice information;
  - (d) stored communications warrant information.
- (2) This section applies despite any other provision of this Part.

#### **215 Section 142**

After "section 139,", insert "139AA,".

#### **216 Paragraph 181A(3)(c)**

Repeal the paragraph, substitute:

---

- (c) the disclosure is:
  - (i) to an IGIS official for the purpose of exercising a power, or performing a function or duty, as an IGIS official; or
  - (ii) by an IGIS official in connection with the IGIS official exercising powers, or performing functions or duties, as an IGIS official.

**217 Paragraph 181A(6)(c)**

Repeal the paragraph, substitute:

- (c) the use is by an IGIS official in connection with the IGIS official exercising powers, or performing functions or duties, as an IGIS official.

**218 After paragraph 181B(3)(b)**

Insert:

- ; or (c) the disclosure is:
  - (i) to an IGIS official for the purpose of exercising a power, or performing a function or duty, as an IGIS official; or
  - (ii) by an IGIS official in connection with the IGIS official exercising powers, or performing functions or duties, as an IGIS official.

**219 After paragraph 181B(6)(b)**

Insert:

- ; or (c) the use is by an IGIS official in connection with the IGIS official exercising powers, or performing functions or duties, as an IGIS official.

**220 Paragraph 182(2)(b)**

Repeal the paragraph, substitute:

- (b) the disclosure is:
  - (i) to an IGIS official for the purpose of exercising a power, or performing a function or duty, as an IGIS official; or

- (ii) by an IGIS official in connection with the IGIS official exercising powers, or performing functions or duties, as an IGIS official.

### **221 Paragraph 182(3)(b)**

Repeal the paragraph, substitute:

- (b) the use is by an IGIS official in connection with the IGIS official exercising powers, or performing functions or duties, as an IGIS official.

### **222 Paragraphs 182B(c) and (d)**

Repeal the paragraphs, substitute:

- (c) in the case of a disclosure—the disclosure is:
  - (i) to an IGIS official for the purpose of exercising a power, or performing a function or duty, as an IGIS official; or
  - (ii) by an IGIS official in connection with the IGIS official exercising powers, or performing functions or duties, as an IGIS official; or
- (d) in the case of a use—the use is by an IGIS official in connection with the IGIS official exercising powers, or performing functions or duties, as an IGIS official.

## **Schedule 2—Amendments contingent on the National Anti-Corruption Commission Act**

### **Part 1—Amendments that commence after the National Anti-Corruption Commission Act**

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

##### **1 Subsection 32AC(6) (note)**

Repeal the note, substitute:

Note: This section applies subject to sections 100 to 102 of the *National Anti-Corruption Commission Act 2022*, including those sections as modified by section 214 of that Act.

##### **2 Section 32AG (note)**

Omit “23A of the *Law Enforcement Integrity Commissioner Act 2006*,”.

#### ***National Anti-Corruption Commission Act 2022***

##### **3 Subsection 101(3)**

Omit “section 34B”, substitute “section 32AC”.

## **Part 2—Amendments contingent on the National Anti-Corruption Commission Act that might not commence**

### ***Law Enforcement Integrity Commissioner Act 2006***

#### **4 Paragraph 23A(a)**

Omit “32AD”, substitute “32AG”.

#### **5 At the end of section 90**

Add:

*Relationship with the Inspector-General of Intelligence and  
Security Act 1986*

- (8) If the Integrity Commissioner gives a direction under subsection (1) in accordance with subsection (3C), subsection (6) has effect in relation to any contravention of the direction despite section 32AC of the *Inspector-General of Intelligence and Security Act 1986*.

## Schedule 3—Application and transitional provisions

### 1 Application—main amendments of the *Inspector-General of Intelligence and Security Act 1986*

#### *General application provision*

- (1) The amendments of the *Inspector-General of Intelligence and Security Act 1986* made by Part 1 of Schedule 1 to this Act apply (subject to this item) in relation to inquiries under that Act:
- (a) commenced after the commencement of that Schedule (whether in response to a complaint, a request or on the Inspector-General of Intelligence and Security’s own motion); and
  - (b) into complaints made to the Inspector-General before the commencement of that Schedule (except in relation to action taken by ONI or DIO) if:
    - (i) the Inspector-General has not completed any preliminary inquiries under section 14 of that Act before that time; or
    - (ii) the Inspector-General has not made a decision on whether to commence an inquiry before that time;whether the action to which the inquiry relates was taken before or after that commencement.
- (2) Subitem (1) does not relate to a disclosure of information which has been allocated under section 43 of the *Public Interest Disclosure Act 2013* before that commencement.

#### *Appointments as Inspector-General*

- (3) The amendments of section 30 of the *Inspector-General of Intelligence and Security Act 1986* made by Part 1 of Schedule 1 apply in relation to any appointment that is in force immediately before, or made after, the commencement of that Schedule.

---

*Amendments relating to giving information etc.*

- (4) The amendments of section 18 of the *Inspector-General of Intelligence and Security Act 1986*, apply in relation to any information or document given or produced, or question answered, after the commencement of Schedule 1 (whether in compliance with a notice given, or in relation to information or a document obtained, before or after that commencement).

*Obligations on Inspector-General*

- (5) Section 17A of the *Inspector-General of Intelligence and Security Act 1986* applies in relation to any inspection, preliminary inquiry or inquiry (as the case requires) begun after the commencement of Schedule 1.
- (6) Despite the repeal of subsection 17(10) of the *Inspector-General of Intelligence and Security Act 1986* by Part 1 of Schedule 1, that subsection continues to apply, after the commencement of that Schedule, in relation to inquiries begun before that commencement, whether or not the opinion mentioned in that subsection was formed before or after that commencement.

*Arrangements and agreements of Inspector-General*

- (7) Sections 32AAC and 32AAD of the *Inspector-General of Intelligence and Security Act 1986* do not affect any arrangement or agreement that is made before the commencement of Schedule 1.
- (8) Section 32AB of the *Inspector-General of Intelligence and Security Act 1986* applies in relation to any functions performed after the commencement of Schedule 1.

*Protection for persons providing information*

- (9) Section 32AC of the *Inspector-General of Intelligence and Security Act 1986* (as inserted by Part 1 of Schedule 1) applies in relation to any information or document provided or made available, whether before or after the commencement of Schedule 1.

*Security of Commonwealth agency information and documents*

- (10) Section 32AD of the *Inspector-General of Intelligence and Security Act 1986* (as inserted by Part 1 of Schedule 1) applies in relation to any inspection, preliminary inquiry, other action or inquiry begun after the commencement of Schedule 1.

*Security of Commonwealth agency information and documents*

- (11) Despite the repeal of section 20 of the *Inspector-General of Intelligence and Security Act 1986* by Part 1 of Schedule 1, that section continues to apply, after the commencement of that Schedule, in relation to any inquiry begun before that commencement.

*Authorisation for the purposes of the Privacy Act 1988*

- (12) Section 32AE of the of the *Inspector-General of Intelligence and Security Act 1986* (as inserted by Part 1 of Schedule 1) applies in relation to any personal information given or made available after the commencement of Schedule 1 (whether or not the information was obtained before or after that commencement).

*Giving directions and guidelines*

- (13) The amendments of section 32B of the *Inspector-General of Intelligence and Security Act 1986* apply in relation to any direction or guideline that is:
- (a) given after the commencement of Schedule 1; or
  - (b) in force immediately before that commencement.

*Secrecy*

- (14) To avoid doubt, section 34 of the *Inspector-General of Intelligence and Security Act 1986* applies after the commencement of Schedule 1 to this Act in relation to any person who has acted as the Inspector-General or as a member of the staff of the Inspector-General before that commencement.

*Reporting on preliminary inquiries*

- (15) To avoid doubt, section 25B of the *Inspector-General of Intelligence and Security Act 1986* applies after the commencement of Schedule 1 to
-

this Act, in relation to preliminary inquiries made by the Inspector-General before or after that commencement.

## **2 Application of amendments in Part 2 of Schedule 1**

The amendments made by Part 2 of Schedule 1 to this Act apply (subject to this item) in relation to the making, disclosing or using (however described) of information, documents or records (however described) after the commencement of that Schedule (whether the information, documents or records were obtained before or after that time).

---

*[Minister's second reading speech made in—  
House of Representatives on 30 November 2022  
Senate on 23 March 2023]*

(143/22)

---