



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

No. 161, 1999



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

No. 161, 1999

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

Contents

1	Short title.....	1
2	Commencement.....	1
3	Schedule(s).....	2
Schedule 1—Warrant provisions etc.		3
Part 1—Australian Security Intelligence Organization Act 1979		3
Part 2—Application and transitional provisions		25
Schedule 2—Penalty provisions		26
Part 1—Amendments		26
<i>Australian Security Intelligence Organization Act 1979</i>		26
Part 2—Application		28
Schedule 3—The spelling of “Organization”		29
Part 1—Amendment of various Acts		29
<i>Acts Interpretation Act 1901</i>		29
<i>Administrative Appeals Tribunal Act 1975</i>		29
<i>Administrative Decisions (Judicial Review) Act 1977</i>		30
<i>Archives Act 1983</i>		30
<i>Australian Postal Corporation Act 1989</i>		30
<i>Australian Radiation Protection and Nuclear Safety Act 1998</i>		30
<i>Australian Security Intelligence Organization Act 1979</i>		30
<i>Crimes Act 1914</i>		30
<i>Customs Act 1901</i>		31
<i>Disability Discrimination Act 1992</i>		31
<i>Freedom of Information Act 1982</i>		31
<i>Human Rights and Equal Opportunity Commission Act 1986</i>		31
<i>Human Rights and Responsibilities Commission Act 1986</i>		31
<i>Inspector-General of Intelligence and Security Act 1986</i>		31
<i>Legislative Instruments Act 1999</i>		32
<i>Merit Protection (Australian Government Employees) Act 1984</i>		32
<i>Migration Act 1958</i>		32

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



Australian Security Intelligence Organisation Legislation Amendment Act 1999

No. 161, 1999

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

[Assented to 10 December 1999]

The Parliament of Australia enacts:

1 Short title

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

2 Commencement

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

Schedule 3

- (2) Subject to subsections (3) to (6), Schedule 3 commences immediately after the commencement of the other Schedules to this Act.

Item 20 of Schedule 3

- (3) If the *Australian Radiation Protection and Nuclear Safety Act 1998* has not commenced before the day on which this Act receives the Royal Assent, item 20 of Schedule 3 to this Act commences immediately after the *Australian Radiation Protection and Nuclear Safety Act 1998* commences.

Item 29 of Schedule 3

- (4) If the *Human Rights Legislation Amendment Act (No. 2) 1999* has commenced before the day on which this Act receives the Royal Assent, item 29 of Schedule 3 to this Act does not commence.

Item 30 of Schedule 3

- (5) However, if the *Human Rights Legislation Amendment Act (No. 2) 1999* has not commenced before that day, item 30 of Schedule 3 to this Act does not commence.

Item 38 of Schedule 3

- (6) If the *Legislative Instruments Act 1999* has not commenced before the day on which this Act receives the Royal Assent, item 38 of Schedule 3 to this Act commences immediately after the *Legislative Instruments Act 1999* commences.

3 Schedule(s)

Subject to section 2, 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—Warrant provisions etc.

Part 1—Australian Security Intelligence Organization Act 1979

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

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

2 Section 14

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

3 After paragraph 17(1)(c)

Insert:

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

4 Paragraph 17(1)(e)

After “section 27A”, insert “or 27B”.

5 After section 17

Insert:

17AA Fees for advice and other services

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

- (4) The Director-General may, on application in writing by a person who is or will be required to pay a fee, if the Director-General considers it appropriate in the circumstances:
- (a) not require the person to pay any of the fee; or
 - (b) require the person to pay only a specified part of the fee.

6 Paragraph 18(3)(c)

Repeal the paragraph, substitute:

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

7 Section 22

Insert:

carrier means:

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

8 Section 22

Insert:

computer means a computer, a computer system or part of a computer system.

9 Section 22

Insert:

data includes information, a computer program or part of a computer program.

10 Section 22

Insert:

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

11 Subsection 24(1)

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

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

12 Subsection 24(2)

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

13 Subsection 24(3)

Insert:

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

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

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

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

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

16 Section 25

Repeal the section, substitute:

25 Search warrants

Issue of search warrant

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

Test for issue of warrant

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

Authorisation in warrant

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

Things that may be specified in warrant

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

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

Other things that may be specified

- (5) The Minister may also specify any of the following things if he or she considers it appropriate in the circumstances:
 - (a) where there is reasonable cause to believe that data relevant to the security matter may be accessible by using a computer or other electronic equipment found on the subject premises—using the computer or other electronic equipment for the purpose of obtaining access to any such data and, if necessary to achieve that purpose, adding, deleting or altering other data in the computer or other electronic equipment;
 - (b) using the computer or other electronic equipment to do any of the following:
 - (i) inspecting and examining any data to which access has been obtained;
 - (ii) converting any data to which access has been obtained, that appears to be relevant to the collection of intelligence by the Organisation in accordance with this Act, into documentary form and removing any such document;
 - (iii) copying any data to which access has been obtained, that appears to be relevant to the collection of intelligence by the Organisation in accordance with this Act, to a storage device and removing the storage device;
 - (c) any thing reasonably necessary to conceal the fact that any thing has been done under the warrant;
 - (d) any other thing reasonably incidental to any of the above.

Certain acts not authorised

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

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

Authorisation of entry measures

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

Statement about warrant coming into force

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

When warrant comes into force

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

Duration of warrant

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

Issue of further warrants not prevented

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

25A Computer access warrant

Issue of computer access warrant

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

Test for issue of warrant

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

Authorisation in warrant

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

Things that may be authorised in warrant

- (4) The things that may be specified are any of the following that the Minister considers appropriate in the circumstances:
- (a) using:
 - (i) a computer; or
 - (ii) a telecommunications facility operated or provided by the Commonwealth or a carrier; or
 - (iii) any other electronic equipment;
for the purpose of obtaining access to data that is relevant to the security matter and is stored in the target computer and, if necessary to achieve that purpose, adding, deleting or altering other data in the target computer;
 - (b) copying any data to which access has been obtained, that appears to be relevant to the collection of intelligence by the Organisation in accordance with this Act;
 - (c) any thing reasonably necessary to conceal the fact that any thing has been done under the warrant;
 - (d) any other thing reasonably incidental to any of the above.

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

Certain acts not authorised

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

Duration of warrant

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

Issue of further warrants not prevented

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

17 Subsection 26(3)

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

18 Subsection 26(3)

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

19 Subsection 26(4)

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

20 Subsection 26(4)

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

21 Subsection 26(5)

Repeal the subsection, substitute:

- (5) The warrant must:
- (a) authorise the use of any force that is necessary and reasonable to do the things mentioned in subsections (3) and (4); and
 - (b) state whether entry is authorised to be made at any time of the day or night or during stated hours of the day or night.
-

22 After subsection 26(6)

Insert:

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

23 After section 26

Insert:

26A Unlawful and lawful uses of tracking devices

Unlawful use of tracking devices

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

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

Lawful use of tracking device

- (2) Despite any law of a State or Territory, an officer, employee or agent of the Organisation does not act unlawfully, by using, for the purposes of the Organisation, a tracking device for the purpose of tracking a person or an object if:
- (a) the person, or the person using the object, consents to it being done; or

- (b) the officer, employee or agent of the Organisation does so in accordance with a warrant issued under section 26B or 26C.

Definitions

- (3) In this section:

apply includes attach to or place on or in.

object means:

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

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

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

26B Tracking device warrants relating to persons

Issue of warrant

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

Test for issue of warrant

- (2) The Minister is only to issue the warrant if he or she is satisfied that:
- (a) a person (the ***subject***) is engaged in, or reasonably suspected by the Director-General of being engaged in or of being likely to engage in, activities prejudicial to security; and
- (b) the use by the Organisation of a tracking device applied to any object (a ***target object***) used or worn, or likely to be used or worn, by the subject to enable the Organisation to track the subject will, or is likely to, assist the Organisation in carrying out its function of obtaining intelligence relevant to security.

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

Authorisation in warrant

- (3) The warrant:
- (a) must be signed by the Minister; and
 - (b) must authorise the Organisation, subject to any restrictions or conditions specified in the warrant, to use a tracking device applied to a target object for the purpose of tracking the subject, who must be specified in the warrant; and
 - (c) may authorise the Organisation to:
 - (i) enter any premises in which a target object is or is likely to be found, for the purpose of applying a tracking device to the target object, or using or maintaining a tracking device so applied; and
 - (ii) enter or alter a target object, for the purpose of applying, using or maintaining a tracking device; and
 - (iii) apply a tracking device to a target object; and
 - (iv) maintain a tracking device applied to a target object; and
 - (v) any other thing reasonably incidental to any of the above.

Authorisation of entry measures

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

Duration of warrant

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

Issue of further warrants not prevented

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

Tracking device may be recovered

- (7) If a tracking device is applied to a target object in accordance with the warrant, the Organisation is authorised to do any of the following:
- (a) enter any premises in which the target object is or is likely to be found, for the purpose of recovering the tracking device;
 - (b) enter or alter the target object for the purpose of recovering the tracking device;
 - (c) recover the tracking device;
 - (d) use any force that is necessary and reasonable to do any of the above;
- at the following time:
- (e) at any time while the warrant is in force or within 28 days after it ceases to be in force;
 - (f) if the tracking device is not recovered at a time mentioned in paragraph (e)—at the earliest time, after the 28 days mentioned in that paragraph, at which it is reasonably practicable to do the things concerned.

Interpretation

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

26C Tracking device warrants relating to objects

Issue of warrant

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

Test for issue of warrant

- (2) The Minister is only to issue the warrant if he or she is satisfied that:
- (a) an object (the **target object**) is used or worn, or likely to be used or worn by a person (whether or not his or her identity is known) engaged in or reasonably suspected by the

Director-General of being engaged in or of being likely to engage in, activities prejudicial to security; and

- (b) the use by the Organisation of a tracking device applied to the target object to enable the Organisation to track the target object will, or is likely to, assist the Organisation in carrying out its function of obtaining intelligence relevant to security.

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

Authorisation in warrant

- (3) The warrant:
 - (a) must be signed by the Minister; and
 - (b) must authorise the Organisation, subject to any restrictions or conditions specified in the warrant, to use a tracking device applied to the target object for the purpose of tracking the target object which must be specified in the warrant; and
 - (c) may authorise the Organisation to:
 - (i) enter any premises specified in the warrant in which the target object is, or is likely to be, found, for the purpose of applying a tracking device to the target object, or maintaining or using a tracking device so applied; and
 - (ii) enter or alter the target object, for the purpose of applying, maintaining or using a tracking device; and
 - (iii) apply a tracking device to the target object; and
 - (iv) maintain a tracking device applied to the target object; and
 - (v) any other thing reasonably incidental to any of the above.

Authorisation of entry measures

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

Duration of warrant

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

Issue of further warrants not prevented

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

Tracking device may be recovered

- (7) If a tracking device is applied to a target object in accordance with the warrant, the Organisation is authorised to do any of the following:
- (a) enter any premises in which the target object is or is likely to be found, for the purpose of recovering the tracking device;
 - (b) enter or alter the target object for the purpose of recovering the tracking device;
 - (c) recover the tracking device;
 - (d) use any force that is necessary and reasonable to do any of the above;
- at the following time:
- (e) at any time while the warrant is in force or within 28 days after it ceases to be in force;
 - (f) if the tracking device is not recovered at a time mentioned in paragraph (e)—at the earliest time, after the 28 days mentioned in that paragraph, at which it is reasonably practicable to do the things concerned.

Interpretation

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

24 After section 27

Insert:

27AA Inspection of delivery service articles

Unlawful access to delivery service articles

- (1) It is unlawful for:
- (a) an officer, employee or agent of the Organisation, for the purposes of the Organisation, to seek from a delivery service provider or from an employee or agent of a delivery service provider; or
 - (b) a delivery service provider or an employee or agent of a delivery service provider to give an officer, employee or agent of the Organisation, for the purposes of the Organisation;

access to:

- (c) an article that is being delivered by the delivery service provider; or
- (d) information concerning the contents or cover of any such article;

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

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

Issue of delivery services warrant

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

Test 1 for issue of warrant

- (3) The Minister may issue a warrant if he or she is satisfied that:
- (a) a person (the *subject*) is engaged in or is reasonably suspected by the Director-General of being engaged in, or of being likely to engage in, activities prejudicial to security; and
 - (b) access by the Organisation to articles sent by or on behalf of, addressed to or intended to be received by, the subject while the articles are being delivered by a delivery service provider,

will, or is likely to, assist the Organisation in carrying out its function of obtaining intelligence relevant to security.

Authorisation in warrant

- (4) The warrant must be signed by the Minister and must authorise the Organisation to do specified things, subject to any restrictions or conditions specified in the warrant, in relation to articles that:
- (a) are being delivered by the delivery service provider; and
 - (b) in respect of which any of the following are satisfied:
 - (i) the articles have been sent by or on behalf of the subject, who must be specified in the warrant, or addressed to the subject; or
 - (ii) the articles are reasonably suspected, by a person authorised to exercise the authority of the Organisation under the warrant, of having been so sent or addressed; or
 - (iii) the articles are intended to be received by the subject, who must be specified in the warrant, or are reasonably suspected, by a person authorised to exercise the authority of the Organisation under the warrant, of being intended to be received by the subject.

Things that may be specified for a warrant issued under subsection (3)

- (5) The things that may be specified are any of the following that the Minister considers appropriate in the circumstances:
- (a) inspecting or making copies of the articles or the covers of the articles;
 - (b) opening the articles;
 - (c) inspecting and making copies of the contents of the articles;
 - (d) any other thing reasonably incidental to any of the above.

Test 2 for issue of warrant

- (6) The Minister may issue a warrant if he or she is satisfied that:
- (a) some or all of the articles that are being, or are likely to be, sent by a delivery service provider to an address (the ***subject address***) are, or will be intended to be, received by a person

(the *subject*) (whether of known identity or not) engaged in, or reasonably suspected by the Director-General of being engaged in, or of being likely to engage in, activities prejudicial to security; and

- (b) access by the Organisation to articles sent to, or intended to be received by, the subject while the articles are being delivered by a delivery service provider will, or is likely to, assist the Organisation in carrying out its function of obtaining intelligence relevant to security.

Authorisation in warrant

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

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

- (8) The things that may be specified are any of the following that the Minister considers appropriate in the circumstances:
 - (a) inspecting or making copies of any of the articles or the covers of the articles;
 - (b) opening any of the articles;
 - (c) inspecting and making copies of the contents of any of the articles;
 - (d) any other thing reasonably incidental to any of the above.

Duration of warrant

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

Issue of further warrants not prevented

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

Definitions

- (11) To avoid doubt, the expression **deliver** an article includes any thing done by the deliverer, for the purpose of delivering the article, from the time when the article is given to the deliverer by the sender until it is given by the deliverer to the recipient.
- (12) In this section:

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

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

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

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

25 Paragraph 27A(1)(a)

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

26 Paragraph 27A(1)(a)

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

27 Subsection 27A(1)

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

28 Subsection 27A(2)

Repeal the subsection, substitute:

- (2) The warrant must:
- (a) authorise the use of any force that is necessary and reasonable to do the things mentioned in subsection (1); and

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

29 Paragraph 27A(3)(a)

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

30 Paragraph 27A(3)(b)

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

31 Paragraph 27A(3)(c)

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

32 After subsection 27A(3)

Insert:

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

- (a) enter any premises for the purpose of recovering the listening device;
- (b) recover the listening device;
- (c) use any force that is necessary and reasonable to do either of the above;

at the following time:

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

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

- (a) enter any premises in which the target object is or is likely to be found, for the purpose of recovering the tracking device;

- (b) enter or alter the target object for the purpose of recovering the tracking device;
- (c) recover the tracking device;
- (d) use any force that is necessary and reasonable to do any of the above;

at the following time:

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

33 After section 27A

Insert:

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

If:

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

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

34 Paragraph 29(1)(a)

Omit "section 26", substitute "section 25, 25A, 26, 26B, 26C, 27 or 27AA".

35 Subsection 29(1)

Omit "under his or her hand", substitute "signed by the Director-General".

36 Section 30

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

37 Section 35

Insert:

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

38 Paragraph 36(1)(b)

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

39 Subsection 38(1)

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

40 Subsection 38(2)

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

41 Subsection 40(1)

Repeal the subsection, substitute:

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

security assessment in respect of that person to the State or the authority of a State for use in considering that prescribed administrative action.

42 Paragraph 40(2)(a)

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

43 After subsection 90(2)

Insert:

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

Part 2—Application and transitional provisions

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

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

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

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

Schedule 2—Penalty provisions

Part 1—Amendments

Australian Security Intelligence Organization Act 1979

1 Subsection 18(2) (penalty)

Repeal the penalty, substitute:

Penalty: Imprisonment for 2 years.

2 Section 33 (penalty)

Repeal the penalty, substitute:

Penalty: 6 months imprisonment.

3 Subsection 81(1) (penalty)

Repeal the penalty, substitute:

Penalty: Imprisonment for 2 years.

4 Subsection 92(1) (penalty)

Repeal the penalty, substitute:

Penalty: Imprisonment for one year.

5 Subsection 92(1A) (penalty)

Repeal the penalty, substitute:

Penalty: Imprisonment for one year.

6 Subsection 92G(1) (penalty)

Repeal the penalty, substitute:

Penalty: Imprisonment for 2 years.

7 Subsection 92M(1) (penalty)

Repeal the penalty, substitute:

Penalty: Imprisonment for 6 months.

8 Subsection 92M(2) (penalty)

Repeal the penalty, substitute:

Penalty: Imprisonment for 6 months.

9 Subsection 92M(3) (penalty)

Repeal the penalty, substitute:

Penalty: Imprisonment for 6 months.

10 Subsection 92M(4) (penalty)

Repeal the penalty, substitute:

Penalty: Imprisonment for 2 years.

11 Section 92Q (penalty)

Repeal the penalty, substitute:

Penalty: Imprisonment for 5 years.

12 Subsection 92S(1) (penalty)

Repeal the penalty, substitute:

Penalty: Imprisonment for 2 years.

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

Repeal the subsections.

Part 2—Application

14 Application

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

Schedule 3—The spelling of “Organization”

Part 1—Amendment of various Acts

1 Amendment of Acts

The specified provisions of the following Acts are amended by:

- (a) omitting “Organization” (wherever occurring) and substituting “Organisation”;
- (b) omitting “*Organization*” (wherever occurring) and substituting “*Organisation*”;
- (c) omitting “Organization’s” (wherever occurring) and substituting “Organisation’s”.

Acts Interpretation Act 1901

2 Subsection 34C(8)

Administrative Appeals Tribunal Act 1975

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

4 Subsections 19(3B) and (6)

5 Subsections 21AA(1) and (3)

6 Subsection 27(1)

7 Subsections 27AA(1) and (2)

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

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

9 Subsection 38A(1)

10 Subsections 39A(8) and (15)

11 Subsection 39B(10)

12 Subsection 43(1A)

13 Subsections 43AAA(3) and (7)

14 Subsection 66(4) (note)

15 Paragraph 69B(1)(a)

Administrative Decisions (Judicial Review) Act 1977

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

Archives Act 1983

17 Paragraph 29(8)(a)

Australian Postal Corporation Act 1989

18 Section 90E (definition of ASIO)

19 Section 90E (definition of ASIO Act)

Australian Radiation Protection and Nuclear Safety Act 1998

20 Paragraph 8(2)(b)

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

Australian Security Intelligence Organization Act 1979

21 The whole of the Act

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

Crimes Act 1914

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

23 Section 85ZL (definition of *security*)

Customs Act 1901

24 Paragraph 219F(2)(b)

Disability Discrimination Act 1992

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

Freedom of Information Act 1982

26 Subsection 7(2A)

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

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

Human Rights and Equal Opportunity Commission Act 1986

29 Subsection 11(4)

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

Human Rights and Responsibilities Commission Act 1986

30 Subsection 11(4)

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

Inspector-General of Intelligence and Security Act 1986

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

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

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

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

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

36 Paragraph 8(8)(c)

37 Paragraph 32A(1)(a)

Legislative Instruments Act 1999

38 Schedule 1, item 3

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

Merit Protection (Australian Government Employees) Act 1984

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

Migration Act 1958

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

41 Subsection 202(4)

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

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

National Crime Authority Act 1984

44 Paragraph 19A(6)(b)

45 Subsection 59(11)

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

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

47 Paragraph 6(2)(b)

48 Subsection 6(3)

Privacy Act 1988

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

Public Service Act 1922

50 Paragraph 22B(14)(e)

51 Paragraph 22C(13)(e)

52 Paragraph 87(2)(g)

53 Paragraph 87J(2)(e)

Remuneration and Allowances Act 1990

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

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

Remuneration Tribunal Act 1973

56 Paragraph 3(4)(m)

Sex Discrimination Act 1984

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

Telecommunications Act 1997

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

59 Paragraph 46(b)

60 Paragraph 91(b)

61 Section 283

Telecommunications (Interception) Act 1979

62 Section 2

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

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

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

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

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

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

69 Paragraph 7(2)(ac)

70 Subsection 7(3)

71 Paragraph 9(1)(b)

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

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

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

73 Subsection 11A(9)

74 Subsection 12(1)

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

75 Paragraphs 14(b) and (c)

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

76 Subsection 15(6)

77 Section 17

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

79 Section 64

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

80 Subsection 65(1)

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

Part 2—Other amendments

Telecommunications (Interception) Act 1979

81 Part III (heading)

Repeal the heading, substitute:

Part III—Warrants authorising the Organisation to intercept telecommunications

Schedule 4—Financial Transaction Reports Act 1988

1 At the end of Part IV

Add:

27AA Access by ASIO to FTR information

- (1) Despite anything in section 25, the Director may, in writing, authorise ASIO (see subsection (8)) to have access to FTR information for the purpose of performing its functions.
- (2) An authorisation under subsection (1) must state the FTR information, or the class of FTR information, to which ASIO is to have access.
- (3) If ASIO is authorised under subsection (1) to have access to FTR information, any ASIO officer (see subsection (8)) authorised by the Director-General of Security (see subsection (8)) is entitled to access to that FTR information in accordance with the authorisation.
- (4) If a person who is an ASIO officer obtains FTR information under this section:
 - (a) the person must not, while he or she is an ASIO officer, divulge or communicate the information except to:
 - (i) a police officer (see subsection (8)) for the purposes of, or in connection with, the performance of that officer's duties; or
 - (ii) an IGIS officer (see subsection (8)) for the purposes of, or in connection with, the performance of that officer's duties in relation to ASIO or employees of ASIO; or
 - (iii) another ASIO officer for the purposes of, or in connection with, the performance of that officer's duties; and
 - (b) the person must not, when he or she is no longer an ASIO officer, make a record of the information, or divulge or communicate the information, in any circumstances.

- (5) If a person who is an IGIS officer obtains FTR information under this section:
- (a) the person must not, while he or she is an IGIS officer, divulge or communicate the information except:
 - (i) to another IGIS officer for the purposes of, or in connection with, the performance of that officer's duties in relation to ASIO or employees of ASIO; or
 - (ii) to the Director-General of Security in a draft report under section 21 of the *Inspector-General of Intelligence and Security Act 1986* (the **IGIS Act**) in relation to ASIO or employees of ASIO; or
 - (iii) in a manner that does not identify, and is not reasonably capable of being used to identify, a person to whom the information relates, in a report under section 22, or a written response to a complainant under section 23, of the IGIS Act in relation to ASIO or employees of ASIO; or
 - (iv) to the Director-General of Security in a report, in relation to ASIO or employees of ASIO, under section 25A of the IGIS Act; or
 - (v) in a manner that does not identify, and is not reasonably capable of being used to identify, a person to whom the information relates, in a report to the responsible Minister, in relation to ASIO or employees of ASIO, under section 25A of the IGIS Act; and
 - (b) the person must not, when he or she is no longer an IGIS officer, make a record of the information, or divulge or communicate the information, in any circumstances.
- (6) A person who is or has been an ASIO officer or IGIS officer and who obtained FTR information under this section must not be required:
- (a) to produce in a court any document containing FTR information; or
 - (b) to divulge or communicate to any court any FTR information.
- (7) If a person who is or has been an ASIO officer or an IGIS officer makes a record of, or divulges or communicates, information in contravention of this section, the person is guilty of an offence
-

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

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

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

(8) In this section:

ASIO means the Australian Security Intelligence Organisation.

ASIO officer means:

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

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

IGIS officer means:

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

police officer means:

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

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

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

Schedule 5—Inspector-General of Intelligence and Security Act 1986

1 At the end of Division 1 of Part II

Add:

9A Inspection functions of Inspector-General

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

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

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

2 Subsection 22(1)

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

3 At the end of section 22

Add:

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

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

- (4) The Inspector-General must give a copy of:
- (a) if subsection (3) applies—the version of the report mentioned in that subsection; or
 - (b) in any other case—the report mentioned in subsection (1);
- to:

- (c) the responsible Minister; and
- (d) if the inquiry was conducted as a result of a request made by the Prime Minister under section 9—the Prime Minister.

4 Subsection 23(2)

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

5 At the end of section 23

Add:

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

6 At the end of Part II

Add:

25A Reports relating to other inspections

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

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

7 Subsection 34(1)

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

8 After subsection 34(1)

Insert:

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

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

9 After subsection 35(2)

Insert:

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

Schedule 6—Taxation Administration Act 1953

1 Section 2

Insert:

ASIO means the Australian Security Intelligence Organisation.

2 Section 2

Insert:

ASIO officer means:

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

3 Section 2

Insert:

authorised ASIO officer means:

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

4 Section 2

Insert:

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

5 Section 2

Insert:

IGIS officer means:

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

5A Section 2

Insert:

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

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

Add:

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

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

7 Subsection 3E(2)

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

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

8 Subsection 3E(3)

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

9 Subsection 3E(4)

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

10 After section 3E

Insert:

3EA Use by ASIO officers of tax information

- (1) Despite any taxation secrecy provision, the Commissioner may disclose tax information to an authorised ASIO officer if the Commissioner is satisfied that the information is relevant to the performance of ASIO's functions under subsection 17(1) of the *Australian Security Intelligence Organisation Act 1979* (**ASIO's 17(1) functions**).
- (2) Subject to this section, if a person who is or has been an ASIO officer obtained tax information under subsection (1) or (3) of this section or subsection 3EC(2), the person must not communicate or divulge the information to another person, or make a record of the tax information.

Penalty: Imprisonment for 2 years.

- (3) In relation to a person who is an ASIO officer, each of the following is an exception to the prohibition in subsection (2):
- (a) making a record of the information for the purposes of, or in connection with, the performance of the ASIO officer's duties in carrying out ASIO's 17(1) functions;
 - (b) divulging or communicating the information to another ASIO officer for the purposes of, or in connection with, the performance of that ASIO officer's duties in carrying out ASIO's 17(1) functions;
 - (c) divulging or communicating the information to a solicitor or barrister representing a person in:
 - (i) a prosecution of a person for a tax-related offence; or
 - (ii) proceedings for the making of a proceeds of crime order;for the purposes of, or in connection with, the prosecution or proceedings;

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

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

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

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

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

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

- (5) A reference in this section to:
 - (a) the possible making of a proceeds of crime order in respect of a person; or
 - (b) the possible proceedings for the making of a proceeds of crime order in respect of a person;

includes a reference to, the making of an order, or proceedings, that are only a possibility at the time in question because the person has not been convicted (within the meaning of section 5 of the *Proceeds of Crime Act 1987*) of an offence to which the order relates.

- (6) In this section:

proceeds of crime order has the meaning given by section 3E.

serious offence has the meaning given by section 3E.

taxation secrecy provision has the meaning given by section 3E.

tax information means information acquired by the Commissioner under the provisions of a tax law.

tax law has the meaning given by section 3E.

tax-related offence has the meaning given by section 3E.

3EB Use by legal practitioners of tax information provided by ASIO

- (1) Subject to this section, a person to whom tax information has been communicated under paragraph 3EA(3)(c) or subsection (2) of this section must not divulge or communicate the information to another person, or make a record of the information.

Penalty: Imprisonment for 2 years.

- (2) An exception to the prohibition in subsection (1) is the communicating or divulging of the information, or the making of a record of the information, for the purposes of, or in connection with, the prosecution or proceedings mentioned in paragraph 3EA(3)(c).
- (3) A person to whom information has been communicated or divulged under paragraph 3EA(3)(c) or subsection (2) of this section must not be required to divulge or communicate the information to a court.
- (4) In this section:

tax information has the meaning given by section 3EA.

3EC Use by IGIS officers of tax information provided by ASIO

- (1) Subject to this section, if a person who is or has been an IGIS officer obtained tax information under section 3EA or subsection (2) of this section, the person must not communicate or divulge the information to another person, or make a record of the information.

Penalty: Imprisonment for 2 years.

- (2) In relation to a person who is an IGIS officer, each of the following is an exception to the prohibition in subsection (1):

- (a) making a record of the information for the purposes of, or in connection with, the performance of the IGIS officer's duties in relation to ASIO or employees of ASIO;
 - (b) divulging or communicating the information to another IGIS officer for the purposes of, or in connection with, the performance of that IGIS officer's duties in relation to ASIO or employees of ASIO;
 - (c) divulging or communicating the information to the Director-General of Security:
 - (i) in a draft report under section 21 of the *Inspector-General of Intelligence and Security Act 1986*; or
 - (ii) in a report under section 22 or 25A of that Act; in relation to ASIO or employees of ASIO.
- (3) If a person who is or has been an IGIS officer obtained tax information under section 3EA or subsection (2) of this section, the person must not:
- (a) be required to divulge or communicate the information to a court; or
 - (b) voluntarily give the information in evidence in proceedings before a court.
- (4) In this section:

tax information has the meaning given by section 3EA.

[*Minister's second reading speech made in—
House of Representatives on 25 March 1999
Senate on 30 August 1999*]

(51/99)
