



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

**No. 101, 1986**

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## About this compilation

### This compilation

This is a compilation of the *Inspector-General of Intelligence and Security Act 1986* that shows the text of the law as amended and in force on 12 August 2023 (the *compilation date*).

The notes at the end of this compilation (the *endnotes*) include information about amending laws and the amendment history of provisions of the compiled law.

### Uncommenced amendments

The effect of uncommenced amendments is not shown in the text of the compiled law. Any uncommenced amendments affecting the law are accessible on the Register ([www.legislation.gov.au](http://www.legislation.gov.au)). The details of amendments made up to, but not commenced at, the compilation date are underlined in the endnotes. For more information on any uncommenced amendments, see the Register for the compiled law.

### Application, saving and transitional provisions for provisions and amendments

If the operation of a provision or amendment of the compiled law is affected by an application, saving or transitional provision that is not included in this compilation, details are included in the endnotes.

### Editorial changes

For more information about any editorial changes made in this compilation, see the endnotes.

### Modifications

If the compiled law is modified by another law, the compiled law operates as modified but the modification does not amend the text of the law. Accordingly, this compilation does not show the text of the compiled law as modified. For more information on any modifications, see the Register for the compiled law.

### Self-repealing provisions

If a provision of the compiled law has been repealed in accordance with a provision of the law, details are included in the endnotes.

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# An Act to provide for the appointment of an Inspector-General of Intelligence and Security, and for related purposes

## Part I—Preliminary

### 1 Short title

This Act may be cited as the *Inspector-General of Intelligence and Security Act 1986*.

### 2 Commencement

This Act shall come into operation on the day fixed under subsection 2(1) of the *Australian Security Intelligence Organisation Amendment Act 1986*.

### 3 Interpretation

- (1) In this Act, unless the contrary intention appears:

**ACIC** means the agency known as the Australian Criminal Intelligence Commission established by the *Australian Crime Commission Act 2002*.

**adverse security assessment** has the same meaning as in Part IV of the *Australian Security Intelligence Organisation Act 1979*.

**AGO** means that part of the Defence Department known as the Australian Geospatial-Intelligence Organisation, and any part of the Defence Force that performs functions on behalf of that part of the Department.

**ASD** means the Australian Signals Directorate.

**ASIO** means the Australian Security Intelligence Organisation continued in existence by the *Australian Security Intelligence Organisation Act 1979*.

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**ASIO affiliate** has the same meaning as in the *Australian Security Intelligence Organisation Act 1979*.

**ASIO employee** has the same meaning as in the *Australian Security Intelligence Organisation Act 1979*.

**ASIS** means the Australian Secret Intelligence Service.

**Australia**, when used in a geographical sense, includes the external Territories.

**CEO of ACIC** means the Chief Executive Officer of ACIC.

**Commonwealth agency** means the following:

- (a) a Department of State, or an Agency within the meaning of the *Public Service Act 1999*;
- (b) the Australian Defence Force;
- (c) an intelligence agency;
- (d) a body, whether incorporated or not, established for public purposes by or under a law of the Commonwealth;
- (e) the holder of an office established for public purposes by or under a law of the Commonwealth;
- (f) a body, whether incorporated or not, declared to be a Commonwealth agency by a legislative instrument made under subsection (4).

**Defence Department** means the Department of State that deals with defence and that is administered by the Minister administering section 1 of the *Defence Act 1903*.

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

**disclosable conduct** has the same meaning as in the *Public Interest Disclosure Act 2013*.

**discrimination** has the same meaning as in the *Australian Human Rights Commission Act 1986*.



**employee**, in relation to a Commonwealth agency, means a person who is employed, whether in a permanent or temporary capacity, in the agency.

**head** means:

- (a) in relation to ASIO—the Director-General of Security; or
- (b) in relation to ASIS—the Director-General of ASIS; or
- (ba) in relation to ASD—the Director-General of ASD; or
- (c) in relation to AGO—the Director of AGO; or
- (d) in relation to DIO—the Director of DIO; or
- (e) in relation to ACIC—the CEO of ACIC; or
- (ea) in relation to the Australian Federal Police—the Commissioner of Police; or
- (f) in relation to ONI—the Director-General of National Intelligence; or
- (g) in relation to any other Commonwealth agency:
  - (i) in the case of a Department of State—the Secretary of the Department; or
  - (ii) otherwise—the person holding, or performing the duties of, the principal office in respect of the agency.

**human rights** has the same meaning as in the *Australian Human Rights Commission Act 1986*.

**Information Commissioner**: see section 3A of the *Australian Information Commissioner Act 2010*.

**Inspector-General** means the Inspector-General of Intelligence and Security.

**Inspector-General ADF** means the Inspector-General of the Australian Defence Force referred to in section 110B of the *Defence Act 1903*.

**integrity body**:

- (a) means any of the following:
  - (i) the Ombudsman;
  - (ii) the Australian Human Rights Commission;
  - (iii) the Information Commissioner;

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- (iv) the National Anti-Corruption Commissioner;
- (iva) the Inspector of the National Anti-Corruption Commission;
- (v) the Inspector-General ADF; and
- (b) for a complaint—has the meaning given by paragraph 11(4A)(a).

***intelligence agency*** means:

- (a) ASIO, ASIS, AGO, DIO, ASD or ONI; or
- (b) the following agencies that have an intelligence function:
  - (i) the Australian Federal Police;
  - (ii) ACIC.

***intelligence function***:

- (a) for ACIC—means:
  - (i) the collection, correlation, analysis, production and dissemination of intelligence obtained by ACIC from the execution of a network activity warrant; or
  - (ii) the performance of a function, or the exercise of a power, conferred on a law enforcement officer of ACIC by the network activity warrant provisions of the *Surveillance Devices Act 2004*; or
- (b) for the Australian Federal Police—means:
  - (i) the collection, correlation, analysis, production and dissemination of intelligence obtained by the Australian Federal Police from the execution of a network activity warrant; or
  - (ii) the performance of a function, or the exercise of a power, conferred on a law enforcement officer of the Australian Federal Police by the network activity warrant provisions of the *Surveillance Devices Act 2004*.

***Judge*** means:

- (a) a Judge of a court created by the Parliament or of a court of a State or of the Northern Territory (other than a Judge or acting Judge of the Local Court of the Northern Territory); or

- (b) a person who has the same designation and status as a Judge of a court created by the Parliament.

**law enforcement officer**, when used in relation to the Australian Federal Police or ACIC, has the same meaning as in the *Surveillance Devices Act 2004*.

**member**, in relation to a Commonwealth agency, means:

- (a) an employee of the agency; or  
(b) a person who is authorised to perform any of the functions of the agency on behalf of the agency.

**network activity warrant** has the same meaning as in the *Surveillance Devices Act 2004*.

**network activity warrant provisions of the Surveillance Devices Act 2004** means:

- (a) Division 6 of Part 2 of that Act; or  
(b) the remaining provisions of that Act so far as they relate to network activity warrants.

**Ombudsman** means the Commonwealth Ombudsman.

**ONI** means the Office of National Intelligence.

**permanent resident** means a person, other than an Australian citizen:

- (a) whose normal place of residence is situated in Australia;  
(b) whose presence in Australia is not subject to any limitation as to time imposed by law; and  
(c) who is not an illegal entrant within the meaning of the *Migration Act 1958*.

**qualified security assessment** has the same meaning as in Part IV of the *Australian Security Intelligence Organisation Act 1979*.

**responsible Minister**, in relation to a Commonwealth agency, means:

- (a) in the case of an agency established or continued in existence by an Act—the Minister administering that Act; or

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- (b) in any other case—the Minister having general responsibility for the activities of the agency.

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

- (2) In this Act, unless the contrary intention appears, a reference to the taking of action includes a reference to:
  - (a) the making of a decision or recommendation; and
  - (b) the failure or refusal to take any action or to make a decision or recommendation.
- (3) For the purposes of this Act, action that is taken by a member of a Commonwealth agency is deemed to be taken by the agency if the member takes the action in his or her capacity as a member of the agency, whether or not:
  - (a) the action is taken for or in connection with, or is incidental to, the performance of the functions of the agency; or
  - (b) the taking of the action is within the duties of the member.
- (4) The Attorney-General may, by legislative instrument, declare a body to be a Commonwealth agency for the purposes of paragraph (f) of the definition of that expression in subsection (1).

#### 4 Objects of Act

The objects of this Act are:

- (a) to assist Ministers in the oversight and review of:
  - (i) the compliance with the law by, and the propriety of particular activities of, Australian intelligence agencies; and
  - (ii) the effectiveness and appropriateness of the procedures of those agencies relating to the legality or propriety of their activities; and
  - (iii) certain other aspects of the activities and procedures of certain of those agencies; and
- (b) to assist Ministers in ensuring that the activities of those agencies are consistent with human rights; and

- (ba) to assist Ministers in investigating intelligence or security matters relating to Commonwealth agencies, including agencies other than intelligence agencies; and
- (c) to allow for review of certain directions given to ASIO by the responsible Minister for ASIO; and
- (d) to assist the Government in assuring the Parliament and the public that intelligence and security matters relating to Commonwealth agencies are open to scrutiny, in particular the activities and procedures of intelligence agencies.

## **5 Application of Act**

This Act applies both within and outside Australia and extends to every external Territory.

### **5A Application of the *Criminal Code***

Chapter 2 of the *Criminal Code* applies to all offences against this Act.

Note: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.

## **Part II—Inspector-General**

### **Division 1—Establishment and functions of Inspector-General**

#### **6 Inspector-General of Intelligence and Security**

- (1) There shall be an Inspector-General of Intelligence and Security.
- (2) The Inspector-General shall be appointed by the Governor-General.
- (3) Before a recommendation is made to the Governor-General for the appointment of a person as Inspector-General, the Prime Minister must consult with the Leader of the Opposition in the House of Representatives.
- (4) The Governor-General may, for the purpose of appointing to the office of Inspector-General a person who is the holder of a judicial office of a State or of the Northern Territory, enter into such arrangement with the Governor of that State or the Administrator of that Territory, as the case may be, as is necessary to secure that person's services.
- (5) An arrangement under subsection (4) may provide for the Commonwealth to reimburse a State or the Northern Territory with respect to the services of the person to whom the arrangement relates.

#### **6AA The Office of the Inspector-General of Intelligence and Security**

For the purposes of the finance law (within the meaning of the *Public Governance, Performance and Accountability Act 2013*):

- (a) the following group of persons is a listed entity:
  - (i) the Inspector-General;
  - (ii) the staff assisting the Inspector-General referred to in section 32; and

- (b) the listed entity is to be known as the Office of the Inspector-General of Intelligence and Security; and
- (c) the Inspector-General is the accountable authority of the Office of the Inspector-General of Intelligence and Security; and
- (d) the persons referred to in paragraph (a) are officials of the Office of the Inspector-General of Intelligence and Security; and
- (e) the purposes of the Office of the Inspector-General of Intelligence and Security include the functions of the Inspector-General referred to in sections 8, 9 and 9A.

### **6A Acting Inspector-General**

- (1) The Attorney-General may appoint a person to act as the Inspector-General:
  - (a) during a vacancy in the office of Inspector-General; or
  - (b) during any period, or during all periods, when the Inspector-General is absent from duty or from Australia or is, for any reason, unable to perform the duties of the office.

Note: For rules that apply to acting appointments, see sections 33AB and 33A of the *Acts Interpretation Act 1901*.

- (2) Before the Attorney-General appoints a person to act as the Inspector-General, the Prime Minister must consult with the Leader of the Opposition in the House of Representatives about the appointment.

### **7 Appointment of Judge as Inspector-General not to affect tenure etc.**

- (1) A person's tenure as the holder of a judicial office and the person's rank, title, status, precedence, salary, annual or other allowances or other rights or privileges as the holder of the judicial office are not affected by:
  - (a) the appointment of the person as the Inspector-General or to act as the Inspector-General; or

(b) service by the person as the Inspector-General or while acting as Inspector-General;

and, for all purposes, the person's service as Inspector-General must be taken to be service as the holder of that judicial office.

(2) In this section, **judicial office** means:

- (a) an office of judge of a court created by the Parliament; or
- (b) an office the holder of which has, by virtue of holding that office, the same status as a judge of a court created by the Parliament.

## **8 Intelligence agency inquiry functions of Inspector-General**

(1) Subject to this section, the functions of the Inspector-General in relation to ASIO are:

- (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, to inquire into any matter that relates to:
  - (i) the compliance by ASIO with the laws of the Commonwealth and of the States and Territories; or
  - (ii) the compliance by ASIO with directions or guidelines given to ASIO by the responsible Minister; or
  - (iii) the propriety of particular activities of ASIO; or
  - (iv) the effectiveness and appropriateness of the procedures of ASIO relating to the legality or propriety of the activities of ASIO; or
  - (v) an act or practice of ASIO that is or may be inconsistent with or contrary to any human right, that constitutes or may constitute discrimination, or 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*, being an act or practice referred to the Inspector-General by the Australian Human Rights Commission; and
- (b) at the request of the Attorney-General or the responsible Minister or of the Inspector-General's own motion, to inquire



into the procedures of ASIO relating to redress of grievances of ASIO employees and ASIO affiliates; and

- (c) at the request of the Attorney-General or the responsible Minister, to inquire into the action (if any) that should be taken to protect the rights of a person who is an Australian citizen or a permanent resident in a case where:
- (i) ASIO has furnished a report to a Commonwealth agency (within the meaning of the *Australian Security Intelligence Organisation Act 1979*) that may result in the taking of action that is adverse to the interests of the person; and
  - (ii) the report could not be reviewed by the Security Division of the Administrative Appeals Tribunal;
- and, in particular, to inquire into whether the person should be informed of the report and given an opportunity to make submissions in relation to the report; and
- (d) where the responsible Minister has given a direction to ASIO on the question whether:
- (i) the collection of intelligence concerning a particular individual is, or is not, justified by reason of its relevance to security; or
  - (ii) the communication of intelligence concerning a particular individual would be for a purpose relevant to security;
- to inquire into whether that collection is justified on that ground or whether that communication would be for that purpose, as the case may be.

- (2) Subject to this section, the functions of the Inspector-General in relation to ASIS, AGO or ASD are:
- (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; or
    - (iv) an act or practice of that agency that is or may be inconsistent with or contrary to any human right, that constitutes or may constitute discrimination, or 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*, being an act or practice referred to the Inspector-General by the Australian Human Rights Commission; and
  - (b) at the request of the Attorney-General or the responsible Minister or of the Inspector-General's own motion, to inquire into the procedures of that agency relating to redress of grievances of employees of that agency; and
  - (c) at the request of the Attorney-General or the responsible Minister or of the Inspector-General's own motion, to inquire into the effectiveness and appropriateness of the procedures of that agency relating to the legality or propriety of the activities of that agency.
- (3) Subject to this section, the functions of the Inspector-General in relation to DIO or ONI are:
- (a) 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:
    - (i) the compliance by that agency with the laws of the Commonwealth and of the States and Territories; or
    - (ia) in the case of ONI—the compliance by ONI with directions given to ONI by the responsible Minister; or
    - (ii) the propriety of particular activities of that agency; or
    - (iii) 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 or of the Inspector-General's own motion, to inquire into any matter that relates to:
    - (i) an act or practice of that agency that is or may be inconsistent with or contrary to any human right, that constitutes or may constitute discrimination, or 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*, being an act or practice referred to the Inspector-General by the Australian Human Rights Commission; or
    - (ii) the procedures of that agency relating to redress of grievances of employees of that agency; and
  - (c) at the request of the Attorney-General or the responsible Minister or of the Inspector-General's own motion, to inquire into any matter in relation to the statutory independence of ONI.
- (3A) Subject to this section, the functions of the Inspector-General in relation to ACIC or the Australian Federal Police are:
- (a) at the request of the Attorney-General or the responsible Minister; or
  - (b) of the Inspector-General's own motion; or
  - (c) in response to a complaint made to the Inspector-General; to inquire into any of the following matters, to the extent that the matter relates to an intelligence function of that agency:
    - (d) the compliance by that agency with the laws of the Commonwealth and of the States and Territories;
    - (e) the compliance by that agency with directions or guidelines given to that agency by the responsible Minister;
    - (f) the propriety of particular activities of that agency;
    - (g) the effectiveness and appropriateness of the procedures of that agency relating to the legality or propriety of the activities of that agency;
    - (h) any matter that relates to an act or practice of that agency, referred to the Inspector-General by the Australian Human Rights Commission:

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- (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*;
  - (i) in relation to ACIC—the compliance by that agency with:
    - (i) directions or guidelines given to that agency; or
    - (ii) policies or other decisions made;by the Board of ACIC or the Inter-Governmental Committee established under the *Australian Crime Commission Act 2002*.
- (3B) The functions of the Inspector-General under subsection (3A) do not include inquiring into any action taken by an examiner (within the meaning of the *Australian Crime Commission Act 2002*) of ACIC in performing functions or exercising powers as an examiner.
- (4) The Inspector-General shall not, of his or her own motion or in response to a complaint made to the Inspector-General, perform any of the functions set out in paragraph (2)(a) in relation to action taken by ASIS, AGO or ASD except to the extent that Australian citizens or permanent residents are affected or a law of the Commonwealth, a State or a Territory may be violated.
- (5) The functions of the Inspector-General under subsections (1), (2), (3) and (3A) do not include inquiring into a matter to which a complaint to the Inspector-General made by an employee of AGO, DIO, ACIC, the Australian Federal Police or ONI relates to the extent that the matter is directly related to:
- (a) the promotion, termination of appointment, discipline or remuneration of the employee by the agency; or
  - (b) another matter relating to the agency's employment of the employee.
- (6) The functions of the Inspector-General include inquiring into a matter to which a complaint to the Inspector-General made by an

ASIO employee, an ASIS employee or an ASD employee relates to the extent that the matter is directly related to:

- (a) the promotion, termination of appointment, discipline or remuneration of the employee by ASIO, ASIS or ASD; or
  - (b) another matter relating to the employment of the employee by ASIO, ASIS or ASD.
- (7) However, the Inspector-General must not inquire into a matter referred to in subsection (6) to the extent that the employee can have the matter reviewed by a body constituted by, or including, persons other than:
- (a) for an ASIO employee—the Director-General of Security, ASIO employees or ASIO affiliates; and
  - (b) for an ASIS employee—the Director-General of ASIS or ASIS employees; and
  - (c) for an ASD employee—the Director-General of ASD or ASD employees.
- Note: See also subsection 11(5).
- (8) The functions of the Inspector-General include inquiring into a matter to which a complaint to the Inspector-General made by an ASIO affiliate relates to the extent that the matter is related to:
- (a) the contract, agreement or other arrangement under which the ASIO affiliate is performing functions or services for ASIO; or
  - (b) the performance of functions or services by the ASIO affiliate under the contract, agreement or other arrangement.
- (8A) However, the Inspector-General may decide not to inquire into a matter referred to in subsection (8) if the Inspector-General is satisfied that the ASIO affiliate can have the matter reviewed by a body constituted by, or including, persons other than the Director-General of Security, ASIO employees or ASIO affiliates.
- (9) The Inspector-General may perform functions conferred on the Inspector-General by another Act.

## 8A Public interest disclosure functions of Inspector-General

- (1) If:
- (a) a disclosure of information has been, or is required to be, allocated under section 43 of the *Public Interest Disclosure Act 2013*; and
  - (b) some or all of the disclosable conduct with which the information is concerned relates (within the meaning of that Act) to an intelligence agency (within the meaning of this Act); and
  - (c) if the intelligence agency is ACIC or the Australian Federal Police—the conduct relates to that agency’s intelligence functions;
- to the extent that the conduct so relates as described in paragraph (b), it is taken, for the purposes of this Act, to be action that relates to the propriety of particular activities of the intelligence agency.
- Note: The Inspector-General’s functions under section 8 include inquiring into the propriety of particular activities of intelligence agencies.
- (2) However, in determining whether the Inspector-General is authorised to inquire into the matter under section 8, disregard subsection 8(4).
- (3) For the purposes of the application of this Act to the action:
- (a) the conduct is to be treated as if it were action taken by the intelligence agency; and
  - (b) a public official who belongs (within the meaning of the *Public Interest Disclosure Act 2013*) to the intelligence agency is taken to be a member of the intelligence agency; and
  - (c) the person who disclosed the information is taken, if the disclosure is allocated to the Inspector-General, to have made a complaint to the Inspector-General in respect of the action.
- (4) However, paragraph (3)(c) does not apply if:
- (a) the person is not an Australian citizen or permanent resident, and the intelligence agency is ASIS, AGO or ASD; or
  - (b) the intelligence agency is DIO or ONI.

- (5) It is immaterial whether the disclosable conduct occurred before or after the commencement of this section.

## **9 Additional inquiry functions of Inspector-General**

### *Intelligence agencies*

- (1) The Prime Minister may request the Inspector-General to inquire into a matter relating to an intelligence agency.
- (2) The Inspector-General must comply with a request under subsection (1) if inquiring into the matter is within the functions of the Inspector-General referred to in section 8 (whether those functions may be performed following a request by a Minister or otherwise).

### *Commonwealth agencies*

- (3) The Prime Minister may request the Inspector-General to inquire into an intelligence or security matter relating to a Commonwealth agency.
- (4) The Inspector-General must comply with a request under subsection (3).

## **9AA Limits on the Inspector-General's functions**

The Inspector-General must not, in the performance of his or her functions under section 8 or 9:

- (a) inquire into a matter relating to a Commonwealth agency that occurred outside Australia, or before the commencement of this Act, without the approval of:
- (i) if the inquiry started as the result of a request under section 8 by the Attorney-General or section 9 by the Prime Minister—the Minister who made the request; or
  - (ii) otherwise—the responsible Minister; or
- (b) inquire into action taken by a Minister except to the extent necessary to perform the functions of the Inspector-General referred to in subparagraphs 8(1)(a)(ii) and 8(2)(a)(ii) and paragraphs 8(1)(d) and (3A)(b); or

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- (ba) inquire into action taken by the Board of ACIC or the Inter-Governmental Committee established under the *Australian Crime Commission Act 2002* except to the extent necessary to perform the functions of the Inspector-General referred to in paragraph 8(3A)(f); or
- (c) inquire into a matter, other than a matter that is referred to the Inspector-General under subsection 65(1A) of the *Australian Security Intelligence Organisation Act 1979*, that is, or could be, the subject of a review by the Security Division of the Administrative Appeals Tribunal.

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

- (1) The functions of the Inspector-General in relation to an intelligence agency include conducting, at such times as the Inspector-General determines in consultation with the head of the 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.
- (2) For the purposes of conducting an inspection of an intelligence agency under subsection (1) in a case where the agency is ACIC or the Australian Federal Police, 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); and
  - (b) is entitled to all reasonable facilities and assistance that the head of the agency is capable of providing; and
  - (c) is entitled to full and free access at all reasonable times to any information, documents or other property of the agency; and
  - (d) may examine, make copies of or take extracts from any information or documents.



**9B Power to enter places relating to questioning warrants**

For the purposes of an inspection under section 9A, the Inspector-General may, after notifying the Director-General of Security:

- (a) enter any place where a person is being questioned or apprehended in relation to a warrant issued under Division 3 of Part III of the *Australian Security Intelligence Organisation Act 1979*; and
- (b) do so at any reasonable time.

## **Division 2—Complaints**

### **10 Form of complaints**

- (1) Subject to subsection (2), a complaint may be made to the Inspector-General orally or in writing.

Note 1: A complaint is taken to have been made under this Act if all or part of the complaint is transferred to the Inspector-General by an integrity body (see section 32AE of this Act).

Note 2: See also Part IIIA which deals with relationships with other agencies and information sharing.

- (2) Where a complaint is made orally to the Inspector-General, the Inspector-General shall:
- (a) put the complaint in writing; or
  - (b) require the complainant to put the complaint in writing and, if such a requirement is made and the complainant does not put the complaint in writing, the Inspector-General may refuse to inquire into the complaint, or to inquire into the complaint further, until the complainant puts the complaint in writing.

### **11 Inquiry into complaint**

- (1) Where:
- (a) a complaint is made to the Inspector-General in respect of action taken by an intelligence agency; and
  - (b) inquiring into the action in response to a complaint is within the functions of the Inspector-General referred to in section 8;

the Inspector-General shall, subject to this section, inquire into the action.

*When inquiry or further inquiry into complaints is not required*

- (2) Where a complaint is made to the Inspector-General in respect of action taken by an intelligence agency, the Inspector-General may decide not to inquire into the action or, if the Inspector-General has

commenced to inquire into the action, decide not to inquire into the action further if the Inspector-General is satisfied that:

- (a) the complainant became aware of the action more than 12 months before the complaint was made;
  - (b) the complaint is frivolous or vexatious or was not made in good faith; or
  - (c) having regard to all the circumstances of the case, an inquiry, or further inquiry, into the action is not warranted.
- (3) Where a complainant has exercised or exercises a right to cause the action to which a complaint relates to be reviewed by a court or a tribunal, the Inspector-General shall not inquire into, or continue to inquire into, the action unless the Inspector-General is of the opinion that there are special reasons for doing so.
- (4) Where the Inspector-General is of the opinion that a complainant has or had a right to cause action to which a complaint relates to be reviewed by a court or a tribunal but has not exercised that right, the Inspector-General may decide not to inquire into the action or not to inquire into the action further if, in the opinion of the Inspector-General, it would be reasonable for the complainant to exercise, or would have been reasonable for the complainant to have exercised, that right.
- (4A) Without limiting paragraph (2)(c), the Inspector-General may decide 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 if:
- (a) a complaint in respect of the action has been, or could have been, made by the complainant to any of the following persons or bodies (the *integrity body* for the complaint):
    - (i) the Ombudsman;
    - (ii) the Australian Human Rights Commission, under Division 3 of Part II (human rights complaints) or Part IIB (unlawful discrimination complaints) of the *Australian Human Rights Commission Act 1986*;
    - (iii) the Information Commissioner under Part V of the *Privacy Act 1988*;
    - (iv) the National Anti-Corruption Commissioner;

- (iva) the Inspector of the National Anti-Corruption Commission;
- (v) the Inspector-General ADF; and
- (b) the Inspector-General is satisfied that the subject matter of the complaint or the part of the complaint could be more effectively or conveniently dealt with by the integrity body for the complaint.

Note: The complaint or part of the complaint may be transferred to the integrity body for the complaint under section 32AD.

*Inquiries into complaints about employment, contracts and related matters*

- (5) The Inspector-General shall not inquire into the matters to which a complaint of the kind referred to in subsection 8(6) relates in respect of action taken by an intelligence agency if the Inspector-General is satisfied that:
  - (a) the procedures of that agency relating to redress of grievances of ASIO employees, ASIS employees or ASD employees (as the case may be) are adequate and effective; or
  - (b) the complainant has not pursued those procedures as far as practicable; or
  - (c) the matters to which the complaint relates are not of sufficient seriousness or sensitivity to justify an inquiry into those matters.
- (6) The Inspector-General may decide not to inquire into the matters to which a complaint of the kind referred to in subsection 8(8) relates in respect of action taken by ASIO if the Inspector-General is satisfied that:
  - (a) the procedures of ASIO relating to redress of grievances of ASIO affiliates are adequate and effective; or
  - (b) the complainant has not pursued those procedures as far as practicable; or
  - (c) the matters to which the complaint relates are not of sufficient seriousness or sensitivity to justify an inquiry into those matters.

## **12 Procedure where complaint not pursued**

Where the Inspector-General decides not to inquire into, or not to inquire further into, a matter to which a complaint made to the Inspector-General relates in respect of action taken by an intelligence agency, the Inspector-General shall, by notice in writing, inform the complainant, the responsible Minister and the head of the agency accordingly.

## **13 Special arrangements for persons in custody**

- (1) A person who is detained in custody is entitled:
  - (a) upon making a request to the person in whose custody he or she is detained or to any other person performing duties in connection with that detention:
    - (i) to be provided with facilities for preparing a complaint in writing to the Inspector-General under this Act, for furnishing in writing to the Inspector-General after the complaint has been made any other relevant information and for enclosing the complaint or other information (if any) in a sealed envelope; and
    - (ii) to have sent to the Inspector-General, without undue delay, a sealed envelope addressed to the Inspector-General; and
  - (b) to have delivered to him or her, without undue delay, any sealed envelope addressed to him or her and sent by the Inspector-General that comes into the possession or under the control of the person in whose custody he or she is detained or of any other person performing duties in connection with that detention.
- (2) A sealed envelope referred to in subsection (1) shall not be opened by a person other than the addressee or a person acting on behalf of the addressee.
- (3) For the purposes of subsections (1) and (2), the Inspector-General may make arrangements with the appropriate authority of a State or Territory for the identification and delivery of sealed envelopes

sent by the Inspector-General to persons detained in custody in that State or Territory.

#### **14 Preliminary inquiries**

- (1) Where a complaint is made to the Inspector-General in respect of action taken by an intelligence agency, the Inspector-General may, for the purpose of:
  - (a) determining whether the Inspector-General is authorised to inquire into the action; or
  - (b) if the Inspector-General is authorised to inquire into the action: determining whether the Inspector-General should inquire into the action;make inquiries of the head of the agency in relation to the action.
- (2) Of his or her own motion, the Inspector-General may make inquiries of the head of an intelligence agency:
  - (a) to determine whether the Inspector-General is authorised to inquire into an action of the agency; or
  - (b) to determine whether the Inspector-General should inquire into the action if the Inspector-General is authorised to inquire into it.

## **Division 3—Inquiries**

### **15 Inspector-General to inform certain persons before commencing an inquiry**

- (1) The Inspector-General shall, before commencing an inquiry into a matter relating to a Commonwealth agency, inform the responsible Minister and, subject to subsections (2) and (3), the head of the agency that the Inspector-General proposes to conduct the inquiry.
- (2) The Inspector-General is not required by subsection (1) to advise the head of a Commonwealth agency that the Inspector-General proposes to conduct an inquiry into a matter that relates directly to the head of the agency.
- (3) However, if the Inspector-General does not advise the head of a Commonwealth agency that the Inspector-General proposes to conduct an inquiry into a matter that relates directly to the head of the agency, the Inspector-General must instead advise:
  - (a) if the matter relates to the head of ASIO, ASIS, ASD, ACIC, the Australian Federal Police or ONI—the responsible Minister in relation to ASIO, ASIS, ASD, ACIC, the Australian Federal Police or ONI, as the case requires; or
  - (b) if the matter relates to the head of AGO or DIO—the Secretary of the Defence Department; or
  - (c) otherwise—the responsible Minister for the agency.
- (4) To avoid doubt, this section is subject to section 17.

### **16 Inspector-General to consult with Auditor-General and Ombudsman**

The Inspector-General shall, before commencing an inquiry into a matter relating to a Commonwealth agency, have regard to the functions of the Auditor-General and the Ombudsman in relation to that agency and may consult with the Auditor-General or the Ombudsman in relation to that matter with a view to avoiding

inquiries being conducted into that matter by the Inspector-General and either or both of the Auditor-General and the Ombudsman.

### **17 Conduct of inquiries**

- (1) An inquiry by the Inspector-General shall be conducted in private and, subject to this Division, in such manner as the Inspector-General thinks fit.
- (2) The Inspector-General may, for the purposes of this Act, obtain information from such persons, and make such inquiries, as the Inspector-General thinks fit.
- (3) Subject to subsections (4) and (5), it is not necessary for a complainant or any other person to be afforded an opportunity to appear before the Inspector-General or before any other person in connection with an inquiry by the Inspector-General under this Act.
- (4) The Inspector-General shall not make a report in relation to an inquiry conducted under this Act in which the Inspector-General sets out opinions that are, either expressly or impliedly, critical of a Commonwealth agency unless the Inspector-General has, before completing the inquiry, given the head of the agency a reasonable opportunity to appear before the Inspector-General and to make, either orally or in writing, submissions in relation to the matters that are the subject of the inquiry.
- (5) Where the Inspector-General proposes to set out in a report in relation to an inquiry conducted under this Act opinions that are, either expressly or impliedly, critical of a person, the Inspector-General shall, unless doing so would, in the opinion of the Inspector-General, prejudice security, the defence of Australia or Australia's relations with other countries, give the person a reasonable opportunity to appear before the Inspector-General and to make, either orally or in writing, submissions in relation to the matters that are the subject of the inquiry.
- (6) Where the Inspector-General gives, under subsection (4) or (5), the head of a Commonwealth agency or another person an opportunity to appear before the Inspector-General, the person may, with the



approval of the Inspector-General, be represented by another person.

- (7) The Inspector-General may, at any time before completing an inquiry under this Act into a matter relating to a Commonwealth agency, discuss any matter that is relevant to the inquiry with the responsible Minister.
- (8) The Inspector-General may, at any time before completing an inquiry under this Act into a matter relating to a Commonwealth agency, if it is appropriate to do so, consult with the Prime Minister or the Attorney-General (or both) on any matter that is relevant to the inquiry.
- (9) The Inspector-General shall not make a report in relation to an inquiry conducted under this Act in which the Inspector-General sets out opinions that are, either expressly or impliedly, critical of a Commonwealth agency unless the Inspector-General has given the responsible Minister a reasonable opportunity to discuss the proposed report with the Inspector-General.
- (10) Where the Inspector-General forms the opinion 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 and that the evidence is of sufficient weight to justify the Inspector-General doing so, the Inspector-General shall bring the evidence to the notice of:
  - (a) in a case where the person is the head of that agency—the responsible Minister; or
  - (b) in any other case—the head of that agency.

## **18 Power to obtain information and documents**

- (1) Where the Inspector-General has reason to believe that a person is capable of giving information or producing documents relevant to a matter that is being inquired into by the Inspector-General under this Act, the Inspector-General may, by notice in writing given to the person, require the person, at such reasonable place and within such reasonable period as are specified in the notice:

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- (a) to give to the Inspector-General, by writing signed by that person or, in the case of a body corporate, on behalf of the body corporate, any such information; or
  - (b) to produce to the Inspector-General any such documents.
- (2) Where documents are produced to the Inspector-General in accordance with a requirement under subsection (1), the Inspector-General:
  - (a) may take possession of, and may make copies of or take extracts from, the documents;
  - (b) may retain possession of the documents for such period as is necessary for the purposes of the inquiry to which the documents relate; and
  - (c) during that period shall permit a person who would be entitled to inspect any one or more of the documents if they were not in the possession of the Inspector-General to inspect at all reasonable times such of the documents as the person would be so entitled to inspect.
- (3) Where the Inspector-General has reason to believe that a person is able to give information relevant to a matter that is being inquired into by the Inspector-General under this Act, the Inspector-General may, by notice in writing given to the person, require the person to attend before the Inspector-General, at such reasonable time and place as are specified in the notice, to answer questions relevant to the matter under inquiry.
- (4) The Inspector-General may administer an oath or affirmation to a person required to attend before the Inspector-General under subsection (3) and may examine the person on oath or affirmation.
- (5) The oath or affirmation to be taken or made by a person for the purposes of this section is an oath or affirmation that the evidence the person will give will be true.
- (6) A person is not excused from giving any information, producing a document or answering a question when required to do so under this section on the ground that the giving of the information, the production of the document or the answer to the question:

- (a) would contravene the provisions of any other Act, would be contrary to the public interest or might tend to incriminate the person or make the person liable to a penalty; or
- (b) would disclose legal advice given to a Minister or a Commonwealth agency;

but the information, the production of the document or the answer to the question is not admissible in evidence against the person in any court or in any proceedings before a person authorised to hear evidence except in a prosecution for:

- (c) an offence against this section; or
- (ca) an offence against section 137.1 of the *Criminal Code* that relates to this section; or
- (d) an offence against:
  - (i) section 6 of the *Crimes Act 1914*; or
  - (ii) section 11.1, 11.4 or 11.5 of the *Criminal Code*;being an offence that relates to an offence against this section.

(7) A person who:

- (a) fails to be sworn or to make an affirmation or to give information or produce a document when required to do so under this section; or
- (b) after being given a notice under subsection (3), fails to comply with the notice or to answer a question that the Inspector-General requires the person to answer;

commits an offence punishable on conviction:

- (c) in the case of a natural person—by imprisonment for a period not exceeding 6 months or a fine not exceeding 10 penalty units, or both; or
- (d) in the case of a body corporate—by a fine not exceeding 50 penalty units.

(7A) Subsection (7) is an offence of strict liability.

Note: For strict liability, see section 6.1 of the *Criminal Code*.

(7B) Subsection (7) does not apply if the person has a reasonable excuse.

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Note: A defendant bears an evidential burden in relation to the matter in subsection (7B) (see subsection 13.3(3) of the *Criminal Code*).

- (9) A person is not liable to any penalty under the provisions of any law of the Commonwealth or of a Territory by reason only of the person having given information, produced a document or answered a question when required to do so under this section.

**19 Entry to premises occupied by a Commonwealth agency**

The Inspector-General may, after notifying the head of a Commonwealth agency, at any reasonable time, enter any place occupied by the agency for the purposes of an inquiry under this Act.

**19A Power to enter places relating to questioning warrants**

For the purposes of an inquiry under this Act, the Inspector-General may, after notifying the Director-General of Security:

- (a) enter any place where a person is being questioned or apprehended in relation to a warrant issued under Division 3 of Part III of the *Australian Security Intelligence Organisation Act 1979*; and
- (b) do so at any reasonable time.

**20 Security of Commonwealth agency documents**

Where:

- (a) the Inspector-General requires access to documents in the possession of a Commonwealth agency for the purposes of an inquiry by the Inspector-General under this Act; and
- (b) those documents have a national security or other protective security classification;

the Inspector-General shall, if he or she intends to remove those documents from the possession of the agency, make arrangements with the head of the agency for the protection of those documents while they remain in the Inspector-General's possession and for the return of those documents.

## Division 4—Reports

### 21 Draft reports relating to inquiries

- (1) If the Inspector-General completes an inquiry under this Act into a matter relating to a Commonwealth agency, the Inspector-General must:
- (a) prepare a draft report setting out the Inspector-General's conclusions and recommendations as a result of the inquiry; and
  - (b) subject to subsections (1A) and (1B), give a copy (the *draft agency copy*) of the draft report to the head of the agency.
- (1AA) The Inspector-General may remove from a draft agency copy any matters that do not relate to the Commonwealth agency concerned.
- (1A) The Inspector-General is not required by subsection (1) to give to the head of a Commonwealth agency a draft agency copy setting out conclusions and recommendations in respect of a matter that relates directly to the head of the agency.
- (1B) However, if the Inspector-General does not give to the head of a Commonwealth agency a draft agency copy setting out conclusions and recommendations in respect of a matter that relates directly to the head of the agency, the Inspector-General must give the draft agency copy to:
- (a) if the matter relates to the head of ASIO, ASIS, ASD, ACIC, the Australian Federal Police or ONI—the responsible Minister in relation to ASIO, ASIS, ASD, ACIC, the Australian Federal Police or ONI, as the case requires; or
  - (b) if the matter relates to the head of AGO or DIO—the Secretary of the Defence Department; or
  - (c) otherwise—the responsible Minister for the agency.
- (1C) To avoid doubt, subsections (1), (1A) and (1B) are subject to section 17.

- (2) Where:
- (a) the Inspector-General gives a draft agency copy to the head of a Commonwealth agency, a responsible Minister or the Secretary of the Defence Department; and
  - (b) the head of the agency, the responsible Minister or the Secretary makes comments on the draft report within a reasonable time after being given the draft agency copy;
- the Inspector-General shall include in his or her final report in relation to the inquiry such of those comments as are relevant to the final report.

## **22 Reports relating to inquiries given to Commonwealth agency head etc.**

- (1) If the Inspector-General completes an inquiry under this Act into a matter relating to a Commonwealth agency, the Inspector-General must:
- (a) prepare a report setting out the Inspector-General's conclusions and recommendations as a result of the inquiry; and
  - (b) give a copy (the *final agency copy*) of the report:
    - (i) if a draft agency copy was given to the head of the Commonwealth agency under subsection 21(1)—to the head of the Commonwealth agency; or
    - (ii) otherwise—to the person to whom a draft agency copy was given under subsection 21(1B).
- (1A) The Inspector-General may remove from a final agency copy any matters that do not relate to the Commonwealth agency concerned.
- (2) The Inspector-General shall include in such a report:
- (a) the Inspector-General's reasons for the conclusions and recommendations set out in the report; and
  - (b) if the Inspector-General considers that a person has been adversely affected by action taken by a Commonwealth agency and that the person should receive compensation for that action—a recommendation that the person receive compensation.

- (3) If the report, or a final agency copy of the report, includes information that was acquired by the Commissioner of Taxation under the provisions of a taxation law (within the meaning of the *Income Tax Assessment Act 1997*), the Inspector-General must prepare another version of the report, or the final agency copy, that does not disclose the tax information.

Note: Section 355-185 in Schedule 1 to the *Taxation Administration Act 1953* 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 the responsible Minister a copy of:
- (a) the final agency copy; or
  - (b) if subsection (3) applies—the version of the final agency copy mentioned in that subsection.
- (5) The Inspector-General must give a copy of the final agency copy or version given to the responsible Minister under subsection (4) to the following:
- (a) if the inquiry was conducted as a result of a request under section 8 by the Attorney-General or section 9 by the Prime Minister—the Minister who made the request;
  - (b) in any case—the Prime Minister or the Attorney-General, if the relevant Minister requests it.
- (6) In addition, the Inspector-General may give the Prime Minister or the Attorney-General a copy of the final agency copy or version given to the responsible Minister under subsection (4) if the Inspector-General considers it appropriate to do so.

## 23 Advice to complainant

- (1) Where the Inspector-General has conducted an inquiry under this Act following a complaint in respect of action taken by an intelligence agency, the Inspector-General shall give to the complainant a written response relating to the inquiry.
- (2) The Inspector-General shall not give such a response to the complainant until the head of the relevant agency and the Inspector-General have agreed that the giving to the complainant

of a response in the terms proposed will not prejudice security, the defence of Australia or Australia's relations with other countries.

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

#### **24 Action as a result of reports—general**

- (1) Where the Inspector-General has conducted an inquiry under this Act into a matter relating to a Commonwealth agency and has, under section 22, given a final agency copy of the report in relation to the inquiry to the head of the agency, the head of the agency shall, if he or she takes or proposes to take any action as a result of the conclusions and recommendations set out in the report, give to the Inspector-General details of the action taken or proposed to be taken.
- (2) Where, in the opinion of the Inspector-General, the head of a Commonwealth agency does not, as a result of the conclusions and recommendations set out in a report, take, within a reasonable period, action that is adequate and appropriate in the circumstances:
- (a) the Inspector-General may discuss the matter with the responsible Minister and prepare a report relating to that matter; and
  - (b) if the Inspector-General prepares such a report, he or she must give a copy of the report to:
    - (i) if the inquiry was conducted as a result of a request made by the Prime Minister under section 9—the Prime Minister; and
    - (ii) in any case—the Attorney-General.
- (3) In addition, the Inspector-General may give a copy of a report prepared under paragraph (2)(a) to the Prime Minister if the Inspector-General considers it appropriate to do so.



## **24A Action as a result of certain reports relating to heads of Commonwealth agencies**

- (1) This section applies if the Inspector-General:
  - (a) has conducted an inquiry under this Act into a matter relating to a Commonwealth agency; and
  - (b) has given a final agency copy in relation to the inquiry to the responsible Minister in relation to the agency, or to the Secretary of the Defence Department, under subparagraph 22(1)(b)(ii).
- (2) If the responsible Minister or the Secretary takes or proposes to take any action as a result of the conclusions and recommendations set out in the report, he or she must give to the Inspector-General details of the action taken or proposed to be taken.
- (3) If, in the opinion of the Inspector-General, the responsible Minister or the Secretary does not take, within a reasonable period, action that is adequate and appropriate in the circumstances:
  - (a) the Inspector-General may prepare a report relating to that matter; and
  - (b) if the Inspector-General prepares such a report, he or she must give a copy of the report to:
    - (i) if the inquiry was conducted as a result of a request made by the Prime Minister under section 9—the Prime Minister; and
    - (ii) in any case—the Attorney-General.
- (4) In addition, the Inspector-General may give a copy of a report prepared under paragraph (3)(a) to the Prime Minister if the Inspector-General considers it appropriate to do so.

## **25 Reports concerning collection or communication of intelligence**

- (1) If:
  - (a) the Inspector-General has, in accordance with paragraph 8(1)(d), inquired into a question to which a direction given to ASIO by the responsible Minister relates; and

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- (b) the Inspector-General concludes that the direction given by the Minister to ASIO was not justified;  
the Inspector-General shall, in addition to giving a copy of the report in relation to the inquiry to the responsible Minister, give a copy of the report to the Attorney-General.
- (2) In addition, the Inspector-General may give a copy of the report to the Prime Minister if the Inspector-General considers it appropriate to do so.

**25A Reports relating to other inspections**

If the Inspector-General completes an inspection of an intelligence 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, 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*.

## Part III—Administrative Provisions

### 26 Terms and conditions of appointment

- (1) The Inspector-General holds office for such period, not exceeding 5 years, as is specified in the instrument of appointment but, subject to subsection (2), is eligible for re-appointment.
- (2) A person is not eligible to be appointed to the office of Inspector-General more than twice.
- (3) A person holding office as Inspector-General, other than a person who is a Judge, holds office on such terms and conditions (if any) in respect of matters not provided for by this Act as are determined by the Governor-General.
- (4) The Inspector-General may be appointed on a full-time or part-time basis.

### 27 Remuneration and allowances

- (1) Subject to this section, the Inspector-General shall be paid such remuneration as is determined by the Remuneration Tribunal but, if no determination of that remuneration is in operation, the Inspector-General shall be paid such remuneration as is prescribed.
- (2) The Inspector-General shall be paid such allowances as are prescribed.
- (3) Subsections (1) and (2) have effect subject to the *Remuneration Tribunal Act 1973*.
- (4) If a person who is a Judge is appointed as Inspector-General, the person is not, while receiving salary or annual allowance as a Judge, entitled to remuneration under this Act.

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**28 Leave of absence**

- (1) A person appointed as Inspector-General has such recreation leave entitlements as are determined by the Remuneration Tribunal.
- (2) The Attorney-General may grant to a person appointed as Inspector-General leave of absence, other than recreation leave, on such terms and conditions as to remuneration or otherwise as the Attorney-General determines.

**29 Resignation**

A person appointed as Inspector-General may resign that office by writing signed by the Inspector-General and delivered to the Governor-General.

**30 Termination of appointment**

- (1) The Governor-General may terminate the appointment of the Inspector-General by reason of misbehaviour or physical or mental incapacity.
- (2) If the Inspector-General:
  - (a) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with creditors or makes an assignment of remuneration for their benefit;
  - (b) being a person holding office on a full-time basis:
    - (i) engages, except with the approval of the Attorney-General, in paid employment outside the duties of his or her office; or
    - (ii) is absent from duty, except on leave, for 14 consecutive days or for 28 days in any period of 12 months; or
  - (c) fails, without reasonable excuse, to comply with section 29 of the *Public Governance, Performance and Accountability Act 2013* (which deals with the duty to disclose interests) or rules made for the purposes of that section;the Governor-General shall terminate the appointment of the Inspector-General.

- (3) A reference in subsections (1) and (2) to a person holding office as Inspector-General does not include a reference to a person who is a Judge.
- (4) If a person appointed as Inspector-General is a Judge and that person ceases to be a Judge, the Governor-General may terminate the appointment of that person.

### **32 Staff**

- (1) The staff necessary to assist the Inspector-General are:
  - (a) persons engaged under the *Public Service Act 1999*; and
  - (b) any persons employed under subsection (3).
- (2) For the purposes of the *Public Service Act 1999*:
  - (a) the Inspector-General and the APS employees assisting the Inspector-General together constitute a Statutory Agency; and
  - (b) the Inspector-General is the Head of that Statutory Agency.
- (3) The Inspector-General may, by written agreement, employ a person to assist the Inspector-General to perform functions and exercise powers under Division 3 or 4 of Part II for the purposes of a particular inquiry specified in the agreement, as delegated under section 32AA.
- (4) However, the Inspector-General may only employ a person in relation to a particular inquiry if the responsible Minister is satisfied that:
  - (a) it is necessary to employ a person in relation to the particular inquiry; and
  - (b) the person has the expertise appropriate to the inquiry.
- (5) The Inspector-General must determine in writing the terms and conditions of employment of the persons mentioned in paragraph (1)(b).
- (6) Unless the responsible Minister otherwise agrees in relation to a particular inquiry, the person proposed to be employed in relation

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to the inquiry must be cleared for security purposes to at least the same level, and at the same frequency, as staff members of ASIS.

**32AA Delegation**

- (1) The Inspector-General may, by writing signed by the Inspector-General, delegate all or any of his or her functions or powers under Division 3 or 4 of Part II to a person referred to in subsection 32(3) for the purposes of the particular inquiry concerned.

Note 1: For further provisions relating to delegations, see sections 34AB and 34A of the *Acts Interpretation Act 1901*.

Note 2: For variation and revocation of an instrument of delegation, see subsection 33(3) of the *Acts Interpretation Act 1901*.

- (2) In exercising functions or powers under a delegation, the delegate must comply with any written directions of the Inspector-General.
- (3) On request by a person affected by a delegate's performance of a function, or exercise of a power, the delegate must produce the instrument of delegation (or a copy of it) for the person to inspect.

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

### **32AC 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 the Inspector-General in the course of exercising powers, or performing functions or duties, in relation to ACIC or the Australian Federal Police; 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), 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.

### **32AD 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*

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*Commission Act 1986, 5B of the Ombudsman Act 1976 and 49B of the Privacy Act 1988).*

**32AE 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 20(4C) of the *Australian Human Rights Commission Act 1986*, 6F(3) of the *Ombudsman Act 1976* and 50(3) of the *Privacy Act 1988*, and paragraph 110C(3)(b) of the *Defence Act 1903*.



## Part IV—Miscellaneous

### 32A Inspector-General may obtain reports

- (1) This section applies to the following documents which are issued on or after the day on which the *Prime Minister and Cabinet Legislation Amendment Act 1991* commences:
- (a) in the case of ASIO—a report referred to in subsection 94(1) of the *Australian Security Intelligence Organisation Act 1979* without deletions;
  - (b) in the case of ASIS and ASD—a report prepared on a periodic basis and given to the responsible Minister;
  - (c) in the case of ONI—a report given to the Minister under section 46 of the *Public Governance, Performance and Accountability Act 2013*;
  - (d) in the case of AGO and DIO—a report prepared on a periodic basis and given to the Secretary of the Defence Department;
  - (e) in the case of ACIC or the Australian Federal Police:
    - (i) a report given to the Minister under section 46 of the *Public Governance, Performance and Accountability Act 2013*; or
    - (ii) any other report prepared on a periodic basis, and given to the responsible Minister, that the Inspector-General is satisfied relates to the performance by ACIC or the Australian Federal Police of its intelligence functions;
  - (f) in the case of ACIC—a report that:
    - (i) is provided to the Board of ACIC or to the Inter-Governmental Committee established under the *Australian Crime Commission Act 2002*; and
    - (ii) the Inspector-General is satisfied relates to the performance by ACIC of its intelligence functions;if the report was prepared:
    - (iii) by the CEO of ACIC; or
    - (iv) by the Chair of the Board and is in the possession of ACIC.

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- (2) The Inspector-General may, in writing, request the head of an intelligence agency to give him or her a single copy of a document to which this section applies.
- (3) The Inspector-General must sign the request.
- (4) As soon as practicable after the head of the agency receives the request, he or she must, subject to subsection (5), give to the Inspector-General a single copy of the document specified in the request.
- (5) Where:
  - (a) in the case of ASIO, ASIS, ASD and ONI, the head of the agency has not provided the responsible Minister with a copy of a report; or
  - (aa) in the case of ACIC or the Australian Federal Police, the head of the agency has not provided the responsible Minister with a copy of a report mentioned in subparagraph (1)(e)(i); or
  - (b) in the case of AGO and DIO, the head of the agency has not provided the Secretary of the Defence Department with a copy of a report;the head need not give a copy of the report to the Inspector-General until the head has given the report to the responsible Minister or Secretary, as the case may be.
- (6) In the case of ACIC, if the CEO of ACIC or the Chair of the Board (as the case requires) has not given the Board or the Inter-Governmental Committee established under the *Australian Crime Commission Act 2002* a copy of a report mentioned in paragraph (1)(f), the CEO or Chair need not give a copy of the report to the Inspector-General until the report has been given to the Board or the Inter-Governmental Committee (as the case requires).

**32B Minister to give directions and guidelines to Inspector-General**

- (1) This section applies to any guidelines or directions given by the responsible Minister to the head of ASIS, AGO, ASD or ONI.

- (1A) This section also applies to any guidelines or directions:
- (a) that relate to the performance by ACIC or the Australian Federal Police of that agency's intelligence functions; and
  - (b) that are given:
    - (i) by the responsible Minister to the head of ACIC or the Australian Federal Police; or
    - (ii) to ACIC by the Board of ACIC or by the Inter-Governmental Committee established under the *Australian Crime Commission Act 2002*.
- (2) As soon as practicable after a direction or guideline is given to the head of that agency, the Inspector-General must be given a copy of the direction or guideline by:
- (a) the Minister; or
  - (b) for directions or guidelines referred to in subparagraph (1A)(b)(ii)—the CEO of ACIC.

### **33 Protection from civil actions**

- (1) Neither the Inspector-General nor a person acting on behalf of the Inspector-General is liable to an action or other proceeding for damages for or in relation to any act done or omitted to be done in good faith in performance or purported performance of any function, or in exercise or purported exercise of any power, conferred on the Inspector-General.
- (2) Where:
- (a) a complaint has been made to the Inspector-General; or
  - (b) a document has been produced, or information or evidence has been given, to the Inspector-General;
- a person is not liable to an action, suit or proceeding in respect of loss, damage or injury of any kind suffered by another person by reason only that the complaint was made, the document was produced or the information or evidence was given.

### **34 Secrecy**

- (1) Subject to subsection (1A), a person who is, or has at any time been, the Inspector-General or a member of the staff of the
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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 not, either directly or indirectly, except in the performance of his or her functions or duties or in the exercise of his or her powers under this Act or the *Public Interest Disclosure Act 2013*:

- (a) make a record of, or divulge or communicate to any person or to a court, any information acquired under this Act by reason of the person holding, or acting in, that office; or
- (b) make use of any such information.

Penalty: Imprisonment for 2 years or 50 penalty units, or both.

(1AA) Subject to subsection (1A), 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 must not, either directly or indirectly, except in the performance of his or her functions or duties or in the exercise of his or her powers under Division 9 of Part VII or section 60A of the *Freedom of Information Act 1982*:

- (a) make a record of, or divulge or communicate to any person or to a court, any information acquired under that Division or section by reason of the person holding, or acting in, that office; or
- (b) make use of any such information.

Penalty: Imprisonment for 2 years or 50 penalty units, or both.

(1AB) Subject to subsection (1A), 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 must not, either directly or indirectly, except in the performance of his or her functions or duties or in the exercise of his or her powers under section 50A of the *Archives Act 1983*:

- (a) make a record of, or divulge or communicate to any person or to a court, any information acquired under that section by reason of the person holding, or acting in, that office; or

(b) make use of any such information.

Penalty: Imprisonment for 2 years or 50 penalty units, or both.

(1A) Subsections (1), (1AA) and (1AB) do 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 the subsection is necessary for the purpose of preserving the well-being or safety of another person; and
  - (b) authorised the person mentioned in the subsection to engage in the conduct for that purpose.
- (2) An offence against subsection (1), (1AA) or (1AB) is an indictable offence.
- (3) Notwithstanding that an offence against subsection (1), (1AA) or (1AB) is an indictable offence, a court of summary jurisdiction may hear and determine proceedings in respect of such an offence if the court is satisfied that it is appropriate to do so and the defendant and the prosecutor consent.
- (4) Where, in accordance with subsection (3), a court of summary jurisdiction convicts a person of an offence against subsection (1), (1AA) or (1AB), the penalty that the court may impose is imprisonment for a period not exceeding 12 months or a fine not exceeding 20 penalty units, or both.
- (5) If a person is prohibited by this section from disclosing information, the person must not be required to:
- (a) produce in a court any document of which the person has custody, or to which the person has access, because the person is performing functions or duties or exercising powers under this Act, Division 9 of Part VII or section 60A of the *Freedom of Information Act 1982* or section 50A of the *Archives Act 1983*; or
  - (b) divulge or communicate to a court any information obtained by the person because the person is performing those functions or duties or exercising those powers;

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except where it is necessary to do so:

- (ba) if the person has custody of, or access to, the document because the person is performing functions or duties or exercising powers under this Act—for the purposes of this Act; and
- (bb) if the person has custody of, or access to, the document because the person is performing functions or duties or exercising powers under Division 9 of Part VII of the *Freedom of Information Act 1982*—for the purposes of that Division; and
- (bc) if the person has custody of, or access to, the document because the person is performing functions or duties or exercising powers under section 60A of the *Freedom of Information Act 1982*—for the purposes of that section; and
- (bd) if the person has custody of, or access to, the document because the person is performing functions or duties or exercising powers under section 50A of the *Archives Act 1983*—for the purposes of that section; and
- (c) if the information is obtained by the person because the person is performing functions or duties or exercising powers under this Act:
  - (i) unless subparagraph (ii) applies—for the purposes of this Act; or
  - (ii) if the information is obtained for the purposes of an investigation by the Inspector-General under the *Public Interest Disclosure Act 2013*—for the purposes of that Act; and
- (ca) if the information is obtained by the person because the person is performing functions or duties or exercising powers under Division 9 of Part VII of the *Freedom of Information Act 1982*—for the purposes of that Division; and
- (d) if the information is obtained by the person because the person is performing functions or duties or exercising powers under section 60A of the *Freedom of Information Act 1982*—for the purposes of that section; and
- (e) if the information is obtained by the person because the person is performing functions or duties or exercising powers

under section 50A of the *Archives Act 1983*—for the purposes of that section.

(6) In this section:

***court*** includes any tribunal, authority or person having power to require the production of documents or the answering of questions.

***produce*** includes permit access to.

### **34AA Disclosure of IPO information to the Ombudsman and the Australian Designated Authority etc.**

(1) The Inspector-General, or a member of the staff of the Inspector-General, may divulge or communicate IPO information to an Ombudsman official if:

- (a) the information is relevant to the Ombudsman’s functions or powers; and
- (b) the Inspector-General is satisfied on reasonable grounds that the Ombudsman has satisfactory arrangements in place for protecting the information.

(2) The Inspector-General, or a member of the staff of the Inspector-General, may divulge or communicate IPO information to an Australian Designated Authority official if:

- (a) the information is relevant to the Australian Designated Authority’s functions or powers under Schedule 1 to the *Telecommunications (Interception and Access) Act 1979*; and
- (b) the Inspector-General is satisfied on reasonable grounds that the Australian Designated Authority has satisfactory arrangements in place for protecting the information.

(3) In this section:

***Australian Designated Authority*** has the same meaning as in Schedule 1 to the *Telecommunications (Interception and Access) Act 1979*.

***Australian Designated Authority official*** means:

- (a) the Australian Designated Authority; or

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- (b) a person who:
  - (i) is an APS employee in the Department administered by the Attorney-General; and
  - (ii) has duties relating to the functions or powers of the Australian Designated Authority under Schedule 1 to the *Telecommunications (Interception and Access) Act 1979*.

***IPO information*** means:

- (a) protected information within the meaning of Schedule 1 to the *Telecommunications (Interception and Access) Act 1979*; or
- (b) information relevant to the operation of that Schedule.

***Ombudsman official*** has the same meaning as in the *Telecommunications (Interception and Access) Act 1979*.

**34AB Disclosure of information or documents to the National Anti-Corruption Commission**

- (1) The Inspector-General, or a member of the staff of the Inspector-General, may divulge or communicate information, or give documents, to a staff member of the NACC if:
  - (a) the information is, or the documents are, relevant to the National Anti-Corruption Commissioner's functions or powers; and
  - (b) the Inspector-General is satisfied on reasonable grounds that the National Anti-Corruption Commissioner has satisfactory arrangements in place for protecting the information or documents.
- (2) The Inspector-General, or a member of the staff of the Inspector-General, may divulge or communicate information, or give documents, to the Inspector of the National Anti-Corruption Commission or a person assisting the Inspector if:
  - (a) the information is, or the documents are, relevant to the Inspector of the National Anti-Corruption Commission's functions or powers; and



- (b) the Inspector-General is satisfied on reasonable grounds that the Inspector of the National Anti-Corruption Commission has satisfactory arrangements in place for protecting the information or documents.
- (3) This section applies despite anything in this Act or any other Act.
- (4) In this section:

*person assisting* the Inspector has the same meaning as in the *National Anti-Corruption Commission Act 2022*.

*staff member* of the NACC has the same meaning as in the *National Anti-Corruption Commission Act 2022*.

### **34A Information and documents may be given to Royal Commissioners**

- (1) The purpose of this section is to further the inquiries to be conducted by a Commission.
- (2) This section applies in spite of anything in this or any other Act.
- (3) The Inspector-General, or a former Inspector-General, may give a Commission:
  - (a) information acquired in his or her capacity as Inspector-General; or
  - (b) documents of which he or she has custody, or to which he or she has access, in that capacity.
- (4) The Inspector-General may, in writing, authorise a staff member or former staff member to give information or documents to a Commission.
- (5) An authorised staff member or former staff member may give a Commission, in accordance with the authorisation:
  - (a) information acquired in his or her capacity as a staff member; or
  - (b) documents of which he or she has custody, or to which he or she has access, in that capacity.

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- (6) The Inspector-General, a former Inspector-General, a staff member or a former staff member may give information or documents to his or her legal adviser for any purpose related to the person's involvement, or possible involvement, in the inquiry conducted by, or any other activities of, a Commission.
- (7) In this section:

**Commission** means a Royal Commission (within the meaning of the *Royal Commissions Act 1902*) prescribed for the purposes of this definition and includes:

- (a) a person appointed to assist the person or persons constituting the Commission; and
- (b) a person or employee under the control of the person or persons constituting the Commission;
- performing any function in relation to the inquiry concerned.

**Inspector-General** includes an acting Inspector-General.

**staff member** means a member of the staff of the Inspector-General.

### **34B 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) making a complaint under Division 2 of Part II;
- (b) the Inspector-General conducting an inspection under section 9A;
- (c) the Inspector-General conducting a preliminary inquiry into a complaint under section 14;
- (d) the Inspector-General conducting an inquiry under Division 3 of Part II.

*Person not liable to penalties under Commonwealth laws*

- (2) The person is not (subject to subsection (3)) liable to a penalty under any law of the Commonwealth for providing or making

available the information or documents in accordance with subsection (1).

*Exceptions*

- (3) Subsection (2) does not apply:
- (a) in relation to proceedings for an offence against:
    - (i) section 137.1 or 137.2 (false or misleading information and documents), section 145.1 (using forged document) or 149.1 (obstructing Commonwealth officials) of the *Criminal Code*; or
    - (ii) Division 3 of Part III of the *Crimes Act 1914* (offences relating to evidence and witnesses); or
    - (iii) 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 subparagraph (i) or (ii); or
  - (b) if the provision:
    - (i) is enacted after the commencement of this section; and
    - (ii) is expressed to have effect despite this section.

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

**34C No evidential burden for IGIS officials in relation to defences to secrecy offences**

- (1) Despite subsections 13.3(2) and (3) of the *Criminal Code*, in a prosecution for any offence of:
- (a) disclosing, making a record of, or using, information or a document; or
  - (b) causing information or a document to be disclosed, recorded or used;

an IGIS official does not bear an evidential burden in relation to whether the disclosure, record or use is for the purposes of, or in connection with, that or any other IGIS official exercising a power, or performing a function or duty, as an IGIS official.

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- (2) Subsection (1) applies even if the offence referred to in that subsection has additional physical elements to those referred to in paragraph (1)(a) or (b).
- (3) To avoid doubt:
  - (a) an offence may be covered by subsection (1) even if the offence does not refer to disclosing, making a record of, or using, information or a document; and
  - (b) without limiting paragraph (a):
    - (i) disclosing information or a document includes communicating information or a document; and
    - (ii) making a record of information or a document includes reproducing information or a document; and
    - (iii) using information or a document includes dealing with, reading or examining information or a document.

### 35 Annual report

- (2) The Inspector-General shall include in an annual report prepared by the Inspector-General and given under section 46 of the *Public Governance, Performance and Accountability Act 2013* for a period the Inspector-General's comments on any inquiry conducted by the Inspector-General in accordance with paragraph 8(1)(d) or 8(3)(c) during the period to which the report relates.
- (2A) The Inspector-General must include in a report referred to in subsection (2) the Inspector-General's comments on any inspection conducted under section 9A during the period to which the report relates.
- (2AA) The Inspector-General must include in a report referred to in subsection (2) the Inspector-General's comments on:
  - (a) the employment of any person under subsection 32(3) during the period to which the report relates (whether or not the employment commenced during that period); and
  - (b) any delegation under section 32AA in force during the period to which the report relates.

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

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

(2B) The Inspector-General must include in a report referred to in subsection (2) the Inspector-General's comments on the extent of compliance by ASIS, AGO, ASD and DIO, during the period to which the report relates, with rules made under section 15 or 41C of the *Intelligence Services Act 2001*.

Note: The rules referred to in this subsection regulate the communication and retention of intelligence information (within the meaning of the *Intelligence Services Act 2001*) concerning Australian persons (within the meaning of that Act).

(2C) The Inspector-General must include in a report referred to in subsection (2) the Inspector-General's comments on the extent of compliance by ONI, during the period to which the report relates, with privacy rules made under section 53 of the *Office of National Intelligence Act 2018*.

Note: The rules referred to in this subsection regulate the collection, communication, handling and retention of certain information that is personal information about an Australian citizen or permanent resident (within the meaning of the *Office of National Intelligence Act 2018*).

(3) A copy of a report referred to in subsection (2) must be given to the Leader of the Opposition in the House of Representatives, but it is the duty of the Leader of the Opposition to treat as secret any part of the report that is not tabled in a House of the Parliament.

(4) Subject to subsection (5), the Attorney-General shall cause a copy of a report referred to in subsection (2) to be laid before each House of the Parliament as soon as practicable after the report is received by the Attorney-General.

(5) For the purposes of subsection (4), the Attorney-General may make such deletions from a report referred to in subsection (2) as the Attorney-General considers necessary in order to avoid prejudice to security, the defence of Australia, Australia's relations with other countries, law enforcement operations or the privacy of individuals.

### **36 Regulations**

The Governor-General may make regulations, not inconsistent with this Act, prescribing matters:

- (a) required or permitted by this Act to be prescribed; or
- (b) necessary or convenient to be prescribed for carrying out or giving effect to this Act.

## Endnotes

Endnote 1—About the endnotes

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## Endnotes

### Endnote 1—About the endnotes

The endnotes provide information about this compilation and the compiled law.

The following endnotes are included in every compilation:

Endnote 1—About the endnotes

Endnote 2—Abbreviation key

Endnote 3—Legislation history

Endnote 4—Amendment history

### Abbreviation key—Endnote 2

The abbreviation key sets out abbreviations that may be used in the endnotes.

### Legislation history and amendment history—Endnotes 3 and 4

Amending laws are annotated in the legislation history and amendment history.

The legislation history in endnote 3 provides information about each law that has amended (or will amend) the compiled law. The information includes commencement details for amending laws and details of any application, saving or transitional provisions that are not included in this compilation.

The amendment history in endnote 4 provides information about amendments at the provision (generally section or equivalent) level. It also includes information about any provision of the compiled law that has been repealed in accordance with a provision of the law.

### Editorial changes

The *Legislation Act 2003* authorises First Parliamentary Counsel to make editorial and presentational changes to a compiled law in preparing a compilation of the law for registration. The changes must not change the effect of the law. Editorial changes take effect from the compilation registration date.

If the compilation includes editorial changes, the endnotes include a brief outline of the changes in general terms. Full details of any changes can be obtained from the Office of Parliamentary Counsel.

### Misdescribed amendments

A misdescribed amendment is an amendment that does not accurately describe how an amendment is to be made. If, despite the misdescription, the amendment



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Endnote 1—About the endnotes

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can be given effect as intended, then the misdescribed amendment can be incorporated through an editorial change made under section 15V of the *Legislation Act 2003*.

If a misdescribed amendment cannot be given effect as intended, the amendment is not incorporated and “(md not incorp)” is added to the amendment history.

## Endnotes

### Endnote 2—Abbreviation key

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#### Endnote 2—Abbreviation key

ad = added or inserted	o = order(s)
am = amended	Ord = Ordinance
amdt = amendment	orig = original
c = clause(s)	par = paragraph(s)/subparagraph(s) /sub-subparagraph(s)
C[x] = Compilation No. x	pres = present
Ch = Chapter(s)	prev = previous
def = definition(s)	(prev...) = previously
Dict = Dictionary	Pt = Part(s)
disallowed = disallowed by Parliament	r = regulation(s)/rule(s)
Div = Division(s)	reloc = relocated
ed = editorial change	renum = renumbered
exp = expires/expired or ceases/ceased to have effect	rep = repealed
F = Federal Register of Legislation	rs = repealed and substituted
gaz = gazette	s = section(s)/subsection(s)
LA = <i>Legislation Act 2003</i>	Sch = Schedule(s)
LIA = <i>Legislative Instruments Act 2003</i>	Sdiv = Subdivision(s)
(md) = misdescribed amendment can be given effect	SLI = Select Legislative Instrument
(md not incorp) = misdescribed amendment cannot be given effect	SR = Statutory Rules
mod = modified/modification	Sub-Ch = Sub-Chapter(s)
No. = Number(s)	SubPt = Subpart(s)
	<u>underlining</u> = whole or part not commenced or to be commenced

## Endnote 3—Legislation history

**Endnote 3—Legislation history**

<b>Act</b>	<b>Number and year</b>	<b>Assent</b>	<b>Commencement</b>	<b>Application, saving and transitional provisions</b>
Inspector-General of Intelligence and Security Act 1986	101, 1986	17 Oct 1986	1 Feb 1987 (s 2 and gaz 1987, No S13)	
Statute Law (Miscellaneous Provisions) Act 1987	141, 1987	18 Dec 1987	s 3: 1 Feb 1987 (s 2(20)) s 5(1): 18 Dec 1987 (s 2(1))	s 5(1)
Migration Legislation Amendment (Consequential Amendments) Act 1989	159, 1989	18 Dec 1989	s 4: 19 Dec 1989 (s 2(2))	—
Defence Legislation Amendment Act 1990	75, 1990	22 Oct 1990	s 5: 22 Oct 1990 (s 2(1))	—
Industrial Relations Legislation Amendment Act 1991	122, 1991	27 June 1991	s 31(2) and Sch: 10 Dec 1991 (s 2(3) and gaz 1991, No S332)	s 31(2)
Prime Minister and Cabinet Legislation Amendment Act 1991	199, 1991	18 Dec 1991	Sch 1: 18 Dec 1991 (s 2)	—
Inspector-General of Intelligence and Security Amendment Act 1994	50, 1994	7 Apr 1994	7 Apr 1994 (s 2)	—
Statute Law Revision Act 1996	43, 1996	25 Oct 1996	Sch 4 (item 95): 25 Oct 1996 (s 2(1))	—
Public Employment (Consequential and Transitional) Amendment Act 1999	146, 1999	11 Nov 1999	Sch 1 (items 546–549): 5 Dec 1999 (s 2(1), (2))	—

## Endnotes

### Endnote 3—Legislation history

<b>Act</b>	<b>Number and year</b>	<b>Assent</b>	<b>Commencement</b>	<b>Application, saving and transitional provisions</b>
Australian Security Intelligence Organisation Legislation Amendment Act 1999	161, 1999	10 Dec 1999	Sch 3 (items 1, 31–37) and Sch 5: 10 Dec 1999 (s 2(1), (2))	—
Criminal Code Amendment (Theft, Fraud, Bribery and Related Offences) Act 2000	137, 2000	24 Nov 2000	Sch 2 (items 248, 249, 418, 419): 24 May 2001 (s 2(3))	Sch 2 (items 418, 419)
Prime Minister and Cabinet Legislation Amendment (Application of Criminal Code) Act 2001	49, 2001	21 June 2001	s 4 and Sch 1 (items 1–5): 19 July 2001 (s 2(c))	s 4
Intelligence Services (Consequential Provisions) Act 2001	153, 2001	1 Oct 2001	s 4 and Sch 2: 29 Oct 2001 (s 2)	s 4
Abolition of Compulsory Age Retirement (Statutory Officeholders) Act 2001	159, 2001	1 Oct 2001	Sch 1 (items 64, 97): 29 Oct 2001 (s 2(1))	Sch 1 (item 97)
Age Discrimination (Consequential Provisions) Act 2004	40, 2004	21 Apr 2004	Sch 1 (items 9–11): 23 June 2004 (s 2(1) item 4)	—
Intelligence Services Legislation Amendment Act 2005	128, 2005	4 Nov 2005	Sch 2: 2 Dec 2005 (s 2(1) item 2)	—
Anti-Money Laundering and Counter-Terrorism Financing (Transitional Provisions and Consequential Amendments) Act 2006	170, 2006	12 Dec 2006	Sch 1 (items 149, 150): 13 Dec 2006 (s 2(1) item 22)	—

## Endnote 3—Legislation history

<b>Act</b>	<b>Number and year</b>	<b>Assent</b>	<b>Commencement</b>	<b>Application, saving and transitional provisions</b>
Anti-Money Laundering and Counter-Terrorism Financing Amendment Act 2007	52, 2007	12 Apr 2007	Sch 1 (items 62, 69): 13 Apr 2007 (s 2(1) item 8)	Sch 1 (item 69)
Disability Discrimination and Other Human Rights Legislation Amendment Act 2009	70, 2009	8 July 2009	Sch 2 (items 93–100) and Sch 3 (items 40–42): 5 Aug 2009 (s 2(1) items 3, 7)	—
Freedom of Information (Removal of Conclusive Certificates and Other Measures) Act 2009	99, 2009	6 Oct 2009	Sch 4: 7 Oct 2009 (s 2)	—
Freedom of Information Amendment (Reform) Act 2010	51, 2010	31 May 2010	Sch 6 (items 49–52) and Sch 7: 1 Nov 2010 (s 2(1) item 7)	Sch 7
National Security Legislation Amendment Act 2010	127, 2010	24 Nov 2010	Sch 9: 25 Nov 2010 (s 2(1) item 15)	—
Tax Laws Amendment (Confidentiality of Taxpayer Information) Act 2010	145, 2010	16 Dec 2010	Sch 2 (items 53–55): 17 Dec 2010 (s 2(1) item 2)	—
<b>as amended by</b> Statute Law Revision (Spring 2016) Act 2016	67, 2016	20 Oct 2016	Sch 2 (item 4): 17 Dec 2010 (s 2(1) item 6)	—
Statute Law Revision Act 2011	5, 2011	22 Mar 2011	Sch 6 (items 56–62) and Sch 7 (item 76): 19 Apr 2011 (s 2(1) items 15– 18)	—

## Endnotes

### Endnote 3—Legislation history

<b>Act</b>	<b>Number and year</b>	<b>Assent</b>	<b>Commencement</b>	<b>Application, saving and transitional provisions</b>
Acts Interpretation Amendment Act 2011	46, 2011	27 June 2011	Sch 2 (items 719–722) and Sch 3 (items 10, 11): 27 Dec 2011 (s 2(1) items 5, 12)	Sch 3 (items 10, 11)
Inspector-General of Intelligence and Security Amendment Act 2011	118, 2011	14 Oct 2011	Sch 1: 15 Oct 2011 (s 2(1) item 2)	—
Statute Law Revision Act 2012	136, 2012	22 Sept 2012	Sch 1 (item 80): 22 Sept 2012 (s 2(1) item 1)	—
Public Interest Disclosure (Consequential Amendments) Act 2013	134, 2013	15 July 2013	Sch 1 (items 2–5): 15 Jan 2014 (s 2(1) item 3)	—
Public Governance, Performance and Accountability (Consequential and Transitional Provisions) Act 2014	62, 2014	30 June 2014	Sch 6 (item 50), Sch 9 (items 166–177) and Sch 14: 1 July 2014 (s 2(1) items 6, 14)	Sch 14
<b>as amended by</b> Public Governance and Resources Legislation Amendment Act (No. 1) 2015	36, 2015	13 Apr 2015	Sch 2 (items 7–9) and Sch 7: 14 Apr 2015 (s 2)	Sch 7
<b>as amended by</b> Acts and Instruments (Framework Reform) (Consequential Provisions) Act 2015	126, 2015	10 Sept 2015	Sch 1 (item 486): 5 Mar 2016 (s 2(1) item 2)	—

## Endnote 3—Legislation history

<b>Act</b>	<b>Number and year</b>	<b>Assent</b>	<b>Commencement</b>	<b>Application, saving and transitional provisions</b>
Acts and Instruments (Framework Reform) (Consequential Provisions) Act 2015	126, 2015	10 Sept 2015	Sch 1 (item 495): 5 Mar 2016 (s 2(1) item 2)	—
National Security Legislation Amendment Act (No. 1) 2014	108, 2014	2 Oct 2014	Sch 1 (items 42–48, 78–87): 30 Oct 2014 (s 2(1) item 2) Sch 7 (items 115–134, 144, 145): 3 Oct 2014 (s 2(1) item 5)	Sch 1 (items 78–87) and Sch 7 (items 144, 145)
Tribunals Amalgamation Act 2015	60, 2015	26 May 2015	Sch 8 (items 28, 29) and Sch 9: 1 July 2015 (s 2(1) items 19, 22)	Sch 9
Statute Law Revision Act (No. 1) 2016	4, 2016	11 Feb 2016	Sch 4 (items 1, 190): 10 Mar 2016 (s 2(1) item 6)	—
Law and Justice Legislation Amendment (Northern Territory Local Court) Act 2016	26, 2016	23 Mar 2016	Sch 1 (items 23, 34, 35): 1 May 2016 (s 2(1) item 2)	Sch 1 (items 34, 35)
Statute Update Act 2016	61, 2016	23 Sept 2016	Sch 1 (items 297–300): 21 Oct 2016 (s 2(1) item 1)	—
Intelligence Services Amendment (Establishment of the Australian Signals Directorate) Act 2018	25, 2018	11 Apr 2018	Sch 1 (items 70–85, 100–108): 1 July 2018 (s 2(1) item 2)	Sch 1 (items 100–108)
Home Affairs and Integrity Agencies Legislation Amendment Act 2018	31, 2018	9 May 2018	Sch 1 (items 27A–61): 11 May 2018 (s 2(1) item 2)	Sch 1 (items 27B, 33, 35B, 37, 39, 41, 45, 49, 53, 55, 57)

## Endnotes

### Endnote 3—Legislation history

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<b>Act</b>	<b>Number and year</b>	<b>Assent</b>	<b>Commencement</b>	<b>Application, saving and transitional provisions</b>
National Security Legislation Amendment (Espionage and Foreign Interference) Act 2018	67, 2018	29 June 2018	Sch 6: 30 June 2018 (s 2(1) item 9)	—
Office of National Intelligence (Consequential and Transitional Provisions) Act 2018	156, 2018	10 Dec 2018	Sch 2 (items 51–65) and Sch 4: 20 Dec 2018 (s 2(1) items 2, 4)	Sch 4
Anti-Money Laundering and Counter-Terrorism Financing and Other Legislation Amendment Act 2020	133, 2020	17 Dec 2020	Sch 1 (item 64): 17 June 2021 (s 2(1) item 2)	—
Australian Security Intelligence Organisation Amendment Act 2020	134, 2020	17 Dec 2020	Sch 1 (items 25, 26): 7 Sept 2020 (s 2(1) item 2)	—
Telecommunications Legislation Amendment (International Production Orders) Act 2021	78, 2021	23 July 2021	Sch 1 (item 5A): 24 July 2021 (s 2(1) item 2)	—
Surveillance Legislation Amendment (Identify and Disrupt) Act 2021	98, 2021	3 Sept 2021	Sch 2 (items 51–76): 4 Sept 2021 (s 2(1) item 3)	—
National Security Legislation Amendment (Comprehensive Review and Other Measures No. 1) Act 2022	31, 2022	1 Apr 2022	Sch 10 (items 6–8, 14): 1 Oct 2022 (s 2(1) items 5, 6)	—



## Endnote 3—Legislation history

<b>Act</b>	<b>Number and year</b>	<b>Assent</b>	<b>Commencement</b>	<b>Application, saving and transitional provisions</b>
Anti-Discrimination and Human Rights Legislation Amendment (Respect at Work) Act 2022	85, 2022	12 Dec 2022	Sch 2 (items 26–30): <u>12 Dec 2023 (s 2(1) item 5)</u>	—
National Anti-Corruption Commission (Consequential and Transitional Provisions) Act 2022	89, 2022	12 Dec 2022	Sch 1 (items 117–122): 1 July 2023 (s 2(1) item 2)	—
Australian Security Intelligence Organisation Amendment Act 2023	33, 2023	28 June 2023	Sch 1 (item 49): 1 July 2023 (s 2(1) item 1)	—
National Security Legislation Amendment (Comprehensive Review and Other Measures No. 2) Act 2023	53, 2023	11 Aug 2023	Sch 1 (items 15, 17): 12 Aug 2023 (s 2(1) item 1)	Sch 1 (item 17)

## Endnotes

### Endnote 4—Amendment history

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### Endnote 4—Amendment history

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<b>Provision affected</b>	<b>How affected</b>
<b>Part I</b>	
s 3 .....	am No 141, 1987; No 159, 1989; No 75, 1990; No 161, 1999; No 128, 2005; No 70, 2009; No 127, 2010; No 5, 2011; No 134, 2013; No 108, 2014; No 26, 2016; No 25, 2018; No 31, 2018; No 156, 2018 ed C34 am No 98, 2021; <u>No 85, 2022</u> ; No 89, 2022
s 4 .....	am No 127, 2010; No 118, 2011; No 31, 2018
s 5A.....	ad No 49, 2001
<b>Part II</b>	
<b>Division 1</b>	
s 6 .....	am No 31, 2018
s 6AA.....	ad No 62, 2014
s 6A.....	ad No 199, 1991 am No 46, 2011; No 31, 2018
s 7 .....	am No 199, 1991 am No 127, 2010
s 8 .....	am No 141, 1987; No 75, 1990; No 161, 1999; No 40, 2004; No 128, 2005; No 70, 2009; No 127, 2010; No 118, 2011; No 108, 2014; No 60, 2015; No 25, 2018; No 31, 2018; No 156, 2018; No 98, 2021; <u>No 85, 2022</u> ; No 33, 2023
s 8A.....	ad No 134, 2013 am No 108, 2014; No 156, 2018; No 98, 2021 ed C37
s 9 .....	am No 161, 1999 rs No 127, 2010 am No 31, 2018
s 9AA.....	ad No 127, 2010 am No 60, 2015; No 31, 2018; No 98, 2021
s 9A.....	ad No 161, 1999

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## Endnote 4—Amendment history

<b>Provision affected</b>	<b>How affected</b>
	am No 127, 2010; No 98, 2021
s 9B.....	ad No 128, 2005
	rs No 134, 2020
<b>Division 2</b>	
s 10 .....	am No 98, 2021
s 11 .....	am No 127, 2010; No 108, 2014; No 25, 2018; No 98, 2021; No 89, 2022
s 12 .....	am No 127, 2010
s 14 .....	am No 127, 2010; No 118, 2011
<b>Division 3</b>	
s 15 .....	am No 128, 2005; No 127, 2010; No 5, 2011; No 108, 2014; No 25, 2018; No 156, 2018; No 98, 2021
s 16 .....	am No 128, 2005; No 127, 2010
s 17 .....	am No 153, 2001; No 127, 2010; No 31, 2018
s 18 .....	am No 146, 1999; No 137, 2000; No 49, 2001; No 127, 2010; No 4, 2016; No 61, 2016
s 19 .....	am No 153, 2001; No 128, 2005; No 127, 2010
s 19A.....	ad No 128, 2005
	rs No 134, 2020
s 20 .....	am No 127, 2010
<b>Division 4</b>	
s 21 .....	am No 128, 2005; No 127, 2010; No 5, 2011; No 108, 2014; No 25, 2018; No 156, 2018; No 98, 2021
s 22 .....	am No 161, 1999; No 128, 2005; No 170, 2006; No 52, 2007; No 127, 2010; No 145, 2010; No 118, 2011; No 136, 2012; No 31, 2018
s 23 .....	am No 161, 1999; No 127, 2010
s 24 .....	am No 127, 2010; No 31, 2018
s 24A.....	ad No 128, 2005
	am No 127, 2010; No 5, 2011; No 31, 2018
s 25 .....	am No 31, 2018
s 25A.....	ad No 161, 1999
	am No 170, 2006; No 127, 2010; No 145, 2010 (as am by No 67, 2016); No 133, 2020

## Endnotes

### Endnote 4—Amendment history

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<b>Provision affected</b>	<b>How affected</b>
<b>Part III</b>	
s 26 .....	am No 153, 2001; No 159, 2001
s 27 .....	am No 43, 1996
s 28 .....	rs No 122, 1991 am No 146, 1999; No 31, 2018
s 30 .....	am No 122, 1991; No 62, 2014; No 31, 2018
s 31 .....	rep No 62, 2014
s 32 .....	am No 146, 1999; No 118, 2011
s 32AA.....	ad No 118, 2011
<b>Part IIIA</b>	
Part IIIA.....	ad No 98, 2021
s 32AC.....	ad No 98, 2021
s 32AD.....	ad No 98, 2021 am No 89, 2022
s 32AE.....	ad No 98, 2021
<b>Part IV</b>	
s 32A.....	ad No 199, 1991 am No 161, 1999; No 128, 2005; No 127, 2010; No 5, 2011; No 108, 2014; No 25, 2018; No 31, 2018; No 156, 2018; No 98, 2021
s 32B.....	ad No 199, 1991 am No 128, 2005; No 127, 2010; No 108, 2014; No 31, 2018; No 156, 2018; No 98, 2021
s 34 .....	am No 161, 1999; No 99, 2009; No 51, 2010; No 118, 2011; No 134, 2013; No 61, 2016
s 34AA.....	ad No 78, 2021
s 34AB.....	ad No 89, 2022
s 34A.....	ad No 50, 1994 am No 118, 2011
s 34B.....	ad No 67, 2018 am No 89, 2022
s 34C.....	ad No 98, 2021

Endnote 4—Amendment history

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<b>Provision affected</b>	<b>How affected</b>
s 35 .....	am No 161, 1999; No 153, 2001; No 128, 2005; No 127, 2010; No 118, 2011; No 62, 2014; No 108, 2014; No 31, 2018; No 156, 2018; No 31, 2022; No 53, 2023

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