



Office of National Intelligence (Consequential and Transitional Provisions) Act 2018

No. 156, 2018

**An Act to deal with consequential and transitional
matters in connection with the *Office of National
Intelligence Act 2018*, and for related purposes**

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

Contents

1	Short title.....	2
2	Commencement.....	2
3	Schedules.....	3
Schedule 1—Repeal of the Office of National Assessments Act 1977		4
	<i>Office of National Assessments Act 1977</i>	4
Schedule 2—Consequential amendments		5
	<i>Acts Interpretation Act 1901</i>	5
	<i>Age Discrimination Act 2004</i>	5
	<i>Anti-Money Laundering and Counter-Terrorism Financing Act 2006</i>	5
	<i>Archives Act 1983</i>	7
	<i>Australian Border Force Act 2015</i>	7
	<i>Australian Crime Commission Act 2002</i>	8
	<i>Australian Human Rights Commission Act 1986</i>	8
	<i>Australian Security Intelligence Organisation Act 1979</i>	8
	<i>Crimes Act 1914</i>	9
	<i>Criminal Code Act 1995</i>	12
	<i>Defence Act 1903</i>	12
	<i>Freedom of Information Act 1982</i>	12
	<i>Independent National Security Legislation Monitor Act 2010</i>	13
	<i>Inspector-General of Intelligence and Security Act 1986</i>	13
	<i>Intelligence Services Act 2001</i>	15
	<i>Privacy Act 1988</i>	18
	<i>Public Interest Disclosure Act 2013</i>	18
	<i>Remuneration and Allowances Act 1990</i>	19
Schedule 3—Amendments contingent on the National Security Legislation Amendment (Espionage and Foreign Interference) Act 2018		20
	<i>Criminal Code Act 1995</i>	20
Schedule 4—Transitional provisions		21

Part 1—Definitions	21
Part 2—Director-General’s continued appointment	22
Part 3—References to, and things done by or in relation to, ONA or the Director-General	23
Part 4—Miscellaneous	24



Office of National Intelligence (Consequential and Transitional Provisions) Act 2018

No. 156, 2018

An Act to deal with consequential and transitional matters in connection with the *Office of National Intelligence Act 2018*, and for related purposes

[Assented to 10 December 2018]

The Parliament of Australia enacts:

1 Short title

This Act is the *Office of National Intelligence (Consequential and Transitional Provisions) Act 2018*.

2 Commencement

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

Commencement information		
Column 1	Column 2	Column 3
Provisions	Commencement	Date/Details
1. Sections 1 to 3 and anything in this Act not elsewhere covered by this table	The day this Act receives the Royal Assent.	10 December 2018
2. Schedules 1 and 2	At the same time as section 3 of the <i>Office of National Intelligence Act 2018</i> commences. However, the provisions do not commence at all if that section does not commence.	20 December 2018
3. Schedule 3	The later of: (a) the commencement of section 3 of the <i>Office of National Intelligence Act 2018</i> ; and (b) immediately after the commencement of Schedule 2 to the <i>National Security Legislation Amendment (Espionage and Foreign Interference) Act 2018</i> . However, the provisions do not commence at all unless both of the events mentioned in paragraphs (a) and (b) occur.	29 December 2018 (paragraph (b) applies)
4. Schedule 4	Immediately after the commencement of section 3 of the <i>Office of National Intelligence Act 2018</i> .	20 December 2018

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

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

3 Schedules

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

Schedule 1—Repeal of the Office of National Assessments Act 1977

Office of National Assessments Act 1977

1 The whole of the Act

Repeal the Act.

Schedule 2—Consequential amendments

Acts Interpretation Act 1901

1 After subsection 34C(7)

Insert:

(7A) This section applies to the Australian Security Intelligence Organisation, the Australian Signals Directorate and the Office of National Intelligence in the following way:

- (a) subsection (3) does not apply;
- (b) if an extension is granted under subsection (5), then for the purpose of subsection (6), paragraph (6)(c) is to be disregarded.

2 Subsection 34C(8)

Repeal the subsection, substitute:

- (8) This section does not apply in relation to the Australian Secret Intelligence Service.

Age Discrimination Act 2004

3 Schedule 1 (table item 35)

Repeal the item.

Anti-Money Laundering and Counter-Terrorism Financing Act 2006

4 Section 5 (paragraph (ge) of the definition of *designated agency*)

Repeal the paragraph, substitute:

- (ge) ONI; or

5 Section 5

Insert:

Director-General of National Intelligence means the Director-General of National Intelligence holding office under the *Office of National Intelligence Act 2018*.

6 Section 5 (definition of ONA)

Repeal the definition.

7 Section 5

Insert:

ONI means the Office of National Intelligence.

8 Subsection 128(13C) (heading)

Repeal the heading, substitute:

ONI officials

9 Subsection 128(13C)

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

10 Subparagraph 128(19)(a)(iv)

Omit “ONA”, substitute “ONI”.

11 Section 133C (heading)

Omit “**Director-General of ONA**”, substitute “**Director-General of National Intelligence**”.

12 Subsection 133C(1)

Omit “Director-General of ONA”, substitute “Director-General of National Intelligence”.

13 Subsection 133C(2)

Repeal the subsection (not including the note), substitute:

- (2) The Director-General of National Intelligence may, in writing, authorise an official of ONI to access the AUSTRAC information and communicate it to the foreign intelligence agency on the Director-General’s behalf.

14 Saving of authorisations

An authorisation by the AUSTRAC CEO under subsection 126(1) of the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* that:

- (a) relates to a:
 - (i) specified official of the Office of National Assessments or ONA; or
 - (ii) a specified class of officials of the Office of National Assessments or ONA; and
- (b) is in force immediately before the day this item commences;

continues in force on and after that day as if it were an authorisation by the AUSTRAC CEO under that subsection in relation to the specified official, or specified class of officials, of the Office of National Intelligence or ONI.

Archives Act 1983**15 Paragraph 29(8)(e)**

Repeal the paragraph, substitute:

- (e) the Office of National Intelligence;

Australian Border Force Act 2015**16 Subsection 4(1) (paragraph (f) of the definition of *intelligence agency*)**

Repeal the paragraph, substitute:

- (f) the Office of National Intelligence; or

17 After paragraph 46(l)

Insert:

- (la) a purpose relating to the performance of functions under section 7 of the *Office of National Intelligence Act 2018*;

Australian Crime Commission Act 2002

18 Subsection 4(1)

Insert:

ONI means the Office of National Intelligence.

19 Before subsection 59AA(3)

Insert:

ONI

- (2B) The CEO may disclose ACC information to ONI if:
- (a) the CEO considers it appropriate to do so; and
 - (b) the information is relevant to the performance of ONI's functions under section 7 of the *Office of National Intelligence Act 2018*; and
 - (c) disclosing the ACC information would not be contrary to a law of the Commonwealth, a State or a Territory that would otherwise apply.

Australian Human Rights Commission Act 1986

20 Subsection 11(4)

Omit "Office of National Assessments", substitute "Office of National Intelligence".

21 Subsection 21(3)

Omit "Office of National Assessments", substitute "Office of National Intelligence".

Australian Security Intelligence Organisation Act 1979

22 Section 4 (paragraph (b) of the definition of *intelligence or security agency*)

Repeal the paragraph, substitute:

- (b) the Office of National Intelligence;

23 Section 4

Insert:

ONI means the Office of National Intelligence.

24 After paragraph 19A(1)(c)

Insert:

(ca) ONI;

25 Subsection 35(1) (paragraph (c) of the definition of *agency head*)

Repeal the paragraph, substitute:

(c) the Director-General of National Intelligence; or

Crimes Act 1914

26 Section 15K (subparagraph (a)(ii) of the definition of *chief officer*)

Omit “and”.

27 Section 15K (at the end of paragraph (a) of the definition of *chief officer*)

Add:

(iii) in relation to the Office of National Intelligence—the Director-General of National Intelligence; and

28 Section 15K (at the end of paragraph (a) of the definition of *intelligence agency*)

Add “or”.

29 Section 15K (at the end of the definition of *intelligence agency*)

Add:

; or (c) the Office of National Intelligence.

30 Section 15K (at the end of paragraph (b) of the definition of *intelligence officer*)

Add “and”.

31 Section 15K (after paragraph (b) of the definition of *intelligence officer*)

Insert:

(c) in relation to the Office of National Intelligence—a staff member of the Office of National Intelligence;

32 After subsection 15KA(3)

Insert:

(3A) An application may only be made under subsection (3) by an intelligence officer of the Office of National Intelligence (**ONI**) for the purpose of ONI carrying out its function under paragraph 7(1)(g) of the *Office of National Intelligence Act 2018*.

33 At the end of subsection 15KB(4)

Add:

; or (h) in the case of the Office of National Intelligence—a person who holds the position, or performs the duties, of an APS Executive Officer Level 1 position, or an equivalent or higher position, in the Office of National Intelligence.

34 Paragraph 15KG(b)

After “agency”, insert “(other than the Office of National Intelligence)”.

35 Subsection 15KH(2)

After “chief officer”, insert “of a law enforcement agency or an intelligence agency (other than the Office of National Intelligence)”.

36 Subsection 15KI(2)

Omit “chief officer of a law enforcement agency or an intelligence agency who grants the authority”, substitute “person specified in subsection (2A)”.

37 After subsection 15KI(2)

Insert:

- (2A) For the purposes of subsection (2), the person who may make the request is:
- (a) the chief officer of a law enforcement agency who granted the authority; or
 - (b) the chief officer of an intelligence agency (other than the Office of National Intelligence) who granted the authority; or
 - (c) if the chief officer of the Office of National Intelligence granted the authority—the chief officer of another intelligence agency.

38 Subsection 15KX(2)

Omit “chief officer of a law enforcement agency or an intelligence agency who grants the authority”, substitute “person specified in subsection (2A)”.

39 Subsection 15KX(2) (note 1)

Repeal the note.

40 Subsection 15KX(2) (note 2)

Omit “Note 2”, substitute “Note”.

41 After subsection 15KX(2)

Insert:

- (2A) For the purposes of subsection (2), the person who may make the request is:
- (a) the chief officer of a law enforcement agency who granted the authority; or
 - (b) the chief officer of an intelligence agency (other than the Office of National Intelligence) who granted the authority; or
 - (c) if the chief officer of the Office of National Intelligence granted the authority—the chief officer of another intelligence agency.

Note: The chief officer may delegate functions under this section—see section 15LH.

42 Paragraph 15KY(3)(a)

After “agency”, insert “(other than the Office of National Intelligence)”.

43 Subsection 15LH(3) (after paragraph (g) of the definition of *senior officer*)

Insert:

- (ga) in relation to the Office of National Intelligence—an SES employee in the Office of National Intelligence, or a person occupying an equivalent or higher position in the Office of National Intelligence; and

44 Section 85ZL (paragraph (c) of the definition of *intelligence or security agency*)

Repeal the paragraph, substitute:

- (c) the Office of National Intelligence; or

Criminal Code Act 1995

45 Section 473.1 of the *Criminal Code* (paragraph (c) of the definition of *intelligence or security officer*)

Repeal the paragraph, substitute:

- (c) the Office of National Intelligence; or

Defence Act 1903

46 Subsection 71A(1) (paragraph (c) of the definition of *intelligence or security agency*)

Repeal the paragraph, substitute:

- (c) the Office of National Intelligence.

Freedom of Information Act 1982

47 Subparagraph 7(2A)(a)(iv)

Repeal the subparagraph, substitute:

- (iv) the Office of National Intelligence;

48 Division 1 of Part I of Schedule 2 (table item dealing with Office of National Assessments)

Repeal the item, substitute:
Office of National Intelligence

Independent National Security Legislation Monitor Act 2010

49 Section 4 (paragraph (j) of the definition of head)

Repeal the paragraph, substitute:
(j) in relation to the Office of National Intelligence—the Director-General of National Intelligence; or

50 Section 4 (paragraph (j) of the definition of law enforcement or security agency)

Repeal the paragraph, substitute:
(j) the Office of National Intelligence;

Inspector-General of Intelligence and Security Act 1986

51 Subsection 3(1) (paragraph (f) of the definition of head)

Repeal the paragraph, substitute:
(f) in relation to ONI—the Director-General of National Intelligence; or

52 Subsection 3(1) (definition of intelligence agency)

Omit “ONA”, substitute “ONI”.

53 Subsection 3(1) (definition of ONA)

Repeal the definition.

54 Subsection 3(1)

Insert:

ONI means the Office of National Intelligence.

55 Subsection 8(3)

Omit “ONA” (first occurring), substitute “ONI”.

56 After subparagraph 8(3)(a)(i)

Insert:

- (ia) in the case of ONI—the compliance by ONI with directions given to ONI by the responsible Minister; or

57 Paragraph 8(3)(c)

Omit “ONA”, substitute “ONI”.

58 Subsection 8(5)

Omit “ONA”, substitute “ONI”.

59 Paragraph 8A(4)(b)

Omit “ONA”, substitute “ONI”.

60 Paragraph 15(3)(a)

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

61 Paragraph 21(1B)(a)

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

62 Paragraph 32A(1)(c)

Repeal the paragraph, substitute:

- (c) in the case of ONI—a report given to the Minister under section 46 of the *Public Governance, Performance and Accountability Act 2013*;

63 Paragraph 32A(5)(a)

Omit “ONA”, substitute “ONI”.

64 Subsection 32B(1)

Omit “or ASD”, substitute “, ASD or ONI”.

65 After subsection 35(2B)

Insert:

- (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 subsection (2C) regulate the communication and retention of identifiable information (within the meaning of the *Office of National Intelligence Act 2018*).

Intelligence Services Act 2001

66 Section 3

Insert:

Director-General of National Intelligence means the Director-General of National Intelligence holding office under the *Office of National Intelligence Act 2018*.

67 Section 3 (definition of ONA)

Repeal the definition.

68 Section 3

Insert:

ONI means the Office of National Intelligence.

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

Repeal the paragraph, substitute:

(c) in relation to ONI—the Minister responsible for ONI.

70 After paragraph 13A(1)(b)

Insert:

(ba) ONI;

71 Paragraphs 29(1)(a) and (b)

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

72 Subsection 29(2)

Omit “ONA”, substitute “ONI”.

73 Before paragraph 29(3)(a)

Insert:

- (aa) reviewing anything done by ONI in its leadership of the national intelligence community, to the extent that it involves prioritising national intelligence priorities and requirements, and allocating resources accordingly, in relation to:
 - (i) an intelligence agency (as defined by subsection 4(1) of the *Office of National Intelligence Act 2018*); or
 - (ii) an agency with an intelligence role or function (as defined by subsection 4(1) of that Act); or
- (ab) reviewing anything done by ONI in its leadership of the national intelligence community, to the extent that it relates to:
 - (i) an intelligence agency (as defined by subsection 4(1) of the *Office of National Intelligence Act 2018*) and a matter that would otherwise be covered by any of the following paragraphs of this subsection; or
 - (ii) an agency with an intelligence role or function (as defined by subsection 4(1) of that Act) and a matter that would otherwise be covered by any of the following paragraphs of this subsection if those paragraphs applied to the agency; or

74 Paragraphs 29(3)(a), (b) and (e)

Omit “ONA”, substitute “ONI”.

75 After paragraph 29(3)(f)

Insert:

- (fa) reviewing the privacy rules made under section 53 of the *Office of National Intelligence Act 2018*; or

76 Paragraphs 29(3)(g) and (h)

Omit “ONA”, substitute “ONI”.

77 Paragraph 29(3)(i)

Repeal the paragraph, substitute:

- (i) reviewing anything done by ONI in carrying out the evaluation functions mentioned in section 9 of the *Office of National Intelligence Act 2018*; or

78 Paragraph 30(bb)

Repeal the paragraph, substitute:

- (bb) the Director-General of National Intelligence;

79 Sections 40A, 40J and 40K

Repeal the sections.

80 Subsection 41B(3) (definition of *information offence provision*)

Repeal the definition, substitute:

information offence provision means subsection 39(1), 39A(1), 40(1), 40B(1), 40C(1), 40D(1), 40E(1), 40F(1), 40G(1), 40H(1), 40L(1) or 40M(1).

81 Clause 1A of Schedule 1 (definition of *agency*)

Omit “ONA”, substitute “ONI”.

82 Clause 1A of Schedule 1 (paragraph (d) of the definition of *agency head*)

Repeal the paragraph, substitute:

- (d) the Director-General of National Intelligence; or

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

Omit “ONA”, substitute “ONI”.

84 Paragraph 20(2)(d) of Schedule 1

Omit “ONA”, substitute “ONI”.

Privacy Act 1988

85 Subsection 6(1) (paragraph (c) of the definition of *intelligence agency*)

Repeal the paragraph, substitute:

- (c) the Office of National Intelligence.

86 After subsection 7(1A)

Insert:

- (1B) Despite subsections (1) and (2), a reference in this Act (other than section 8) to an act or to a practice does not include a reference to the act or practice by an agency with an intelligence role or function (within the meaning of the *Office of National Intelligence Act 2018*) so far as it involves the disclosure of personal information to the Office of National Intelligence.

87 Subsection 80P(7) (paragraph (c) of the definition of *designated secrecy provision*)

Omit “40A to 40M”, substitute “40B to 40H, 40L, 40M”.

88 Subsection 80P(7) (after paragraph (c) of the definition of *designated secrecy provision*)

Insert:

- (ca) sections 42 to 44 of the *Office of National Intelligence Act 2018*;

Public Interest Disclosure Act 2013

89 Section 8 (paragraph (f) of the definition of *intelligence agency*)

Repeal the paragraph, substitute:

- (f) the Office of National Intelligence.

90 Paragraph 72(1)(j)

Repeal the paragraph, substitute:

- (j) the Office of National Intelligence; or
-

Remuneration and Allowances Act 1990

**91 Part 3 of Schedule 2 (table item dealing with
Director-General, Office of National Assessments)**

Omit “Director-General, Office of National Assessments”, substitute
“Director-General of National Intelligence”.

**Schedule 3—Amendments contingent on the
National Security Legislation
Amendment (Espionage and Foreign
Interference) Act 2018**

Criminal Code Act 1995

1 Subsection 121.1(1) of the *Criminal Code* (paragraph (f) of the definition of *domestic intelligence agency*)

Repeal the paragraph, substitute:

(f) the Office of National Intelligence.

Schedule 4—Transitional provisions

Part 1—Definitions

1 Definitions

- (1) In this Schedule:

commencement means the day that this Schedule commences.

Director-General of ONA means the Director-General of ONA holding office under section 10 of the old law.

new law means the *Office of National Intelligence Act 2018*.

old law means the *Office of National Assessments Act 1977*, as in force immediately before commencement.

ONA means the Office of National Assessments established by section 4 of the old law.

- (2) An expression used in this Schedule that is also used in the new law has the same meaning in this Schedule as it has in the new law.

Part 2—Director-General's continued appointment

2 Director-General of ONA continues as Director-General of National Intelligence

The person who held office as the Director-General of ONA immediately before commencement is taken to have been appointed as the Director-General of National Intelligence by the Governor-General under section 24 of the new law:

- (a) for the balance of the person's term of appointment that remained immediately before commencement; and
- (b) in relation to remuneration and allowances—on the same terms and conditions as applied to the person before commencement; and
- (c) in relation to any other term and condition of appointment—on the terms and conditions provided for by Division 3 of Part 3 of the new law.

Part 3—References to, and things done by or in relation to, ONA or the Director-General

3 Things done by, or in relation to, ONA

- (1) If a thing was done by, or in relation to, ONA, then the thing is taken, for the purposes of the operation of any law on and after commencement, to have been done by, or in relation to, ONI.
- (2) The Prime Minister may, in writing, determine that subitem (1) does not apply in relation to a specified thing done by, or in relation to, ONA.
- (3) To avoid doubt, doing a thing includes making an instrument.
- (4) A determination under subitem (2) is not a legislative instrument.

4 Things done by, or in relation to, the Director-General of ONA

- (1) If a thing was done by, or in relation to, the Director-General of ONA, then the thing is taken, for the purposes of the operation of any law on and after commencement, to have been done by, or in relation to, the Director-General of National Intelligence.
- (2) The Prime Minister may, in writing, determine that subitem (1) does not apply in relation to a specified thing done by, or in relation to, the Director-General of ONA.
- (3) To avoid doubt, doing a thing includes making an instrument.
- (4) A determination under subitem (2) is not a legislative instrument.

Part 4—Miscellaneous

5 Requests for reports or assessments

If, before commencement:

- (a) a request had been made under subsection 5(2) of the old law for a report or an assessment; and
- (b) the report had not been prepared or the assessment made;

then, the request is treated as if it had been made under section 22 of the new law.

Note: The Director-General of National Intelligence must endeavour to respond to requests under section 22 of the new law: see paragraph 16(1)(c) of the new law.

6 National Assessments Board

Membership of the Board

- (1) If, immediately before commencement, a person was a member of the National Assessments Board, then the person continues to be a member of the Board on and after commencement until the person's membership of the Board ceases due to a variation in the membership of the Board by the Director-General of National Intelligence under section 48 of the new law.

Board's consideration of national assessments

- (2) If:
 - (a) an assessment was prepared before commencement; and
 - (b) at commencement, the National Assessments Board had not completed its consideration of the assessment;

then, despite the repeal of the *Office of National Assessments Act 1977*, the Board must complete its consideration of the assessment, and the Director-General must deal with the assessment, in accordance with the old law.

7 Continuation of existing inquiries under the *Inspector-General of Intelligence and Security Act 1986*

If the Inspector-General of Intelligence and Security had begun, but not completed, an inquiry in relation to ONA under section 8 of the

Inspector-General of Intelligence and Security Act 1986 before commencement, then, for the purposes of completing that inquiry:

- (a) the *Inspector-General of Intelligence and Security Act 1986*, as in force on the day that the inquiry began, continues in force despite the amendments made by this Act and the enactment of the new law; and
- (b) any other Act amended by this Act, as in force on the day that the inquiry began, continues in force despite the amendments made by this Act.

Note: This means, for example, that a person who was given a notice under section 18 of the *Inspector-General of Intelligence and Security Act 1986* before commencement in relation to an inquiry is still required to comply with the notice after that date if the person has not done so.

8 Transitional rules

- (1) The Prime Minister may, by legislative instrument, make rules prescribing matters of a transitional nature (including prescribing any saving or application provisions) relating to:
 - (a) the amendments or repeals made by this Act; or
 - (b) the enactment of this Act or the new law.
- (2) To avoid doubt, the rules may not do the following:
 - (a) create an offence or civil penalty;
 - (b) provide powers of:
 - (i) arrest or detention; or
 - (ii) entry, search or seizure;
 - (c) impose a tax;
 - (d) set an amount to be appropriated from the Consolidated Revenue Fund under an appropriation in this Act;
 - (e) directly amend the text of this Act.
- (3) This Act (other than subitem (2)) does not limit the rules that may be made for the purposes of subitem (1).

*[Minister's second reading speech made in—
House of Representatives on 28 June 2018
Senate on 29 November 2018]*

(132/18)

26

*Office of National Intelligence (Consequential and Transitional
Provisions) Act 2018*

No. 156, 2018