



# **Intelligence Services Amendment Act 2018**

**No. 161, 2018**

**An Act to amend the *Intelligence Services Act 2001*,  
and for related purposes**

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



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# Intelligence Services Amendment Act 2018

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## **An Act to amend the *Intelligence Services Act 2001*, and for related purposes**

[Assented to 10 December 2018]

The Parliament of Australia enacts:

### **1 Short title**

This Act is the *Intelligence Services Amendment 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
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column 2 of the table. Any other statement in column 2 has effect according to its terms.

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<b>Commencement information</b>		
<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>
<b>Provisions</b>	<b>Commencement</b>	<b>Date/Details</b>
1. Sections 1 to 3 and anything in this Act not elsewhere covered by this table	The day this Act receives the Royal Assent.	10 December 2018
2. Schedule 1	The day after this Act receives the Royal Assent.	11 December 2018

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Note: This table relates only to the provisions of this Act as originally enacted.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Legislation that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

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## Schedule 1—Amendments

### *Intelligence Services Act 2001*

#### **1 After subsection 6(5)**

Insert:

- (5A) Subsection (4) does not prevent:
- (a) the provision of weapons, or training in the use of force (including in the use of weapons) against a person, in accordance with Schedule 3, for the purposes of activities undertaken by ASIS outside Australia; or
  - (b) the use of force against a person (including the use of weapons), in accordance with Schedule 3, in the course of activities undertaken by ASIS outside Australia; or
  - (c) the threat of the use of force against a person (including the threat of the use of weapons), in accordance with Schedule 3, in the course of activities undertaken by ASIS outside Australia.
- (5B) Nothing in subsection (5) or (5A) permits conduct by a person (the *actor*) that:
- (a) would constitute torture; or
  - (b) would subject a person to cruel, inhuman or degrading treatment; or
  - (c) would involve the commission of a sexual offence against any person; or
  - (d) is likely to cause the death of, or grievous bodily harm to, a person, unless the actor believes on reasonable grounds that the conduct is necessary to protect life or to prevent serious injury to another person (including the actor).
- (5C) Nothing in subsection (5) or Schedule 2 limits the operation of subsection (5A) or Schedule 3.
- (5D) Nothing in subsection (5A) or Schedule 3 limits the operation of subsection (5) or Schedule 2.

#### **2 Subsection 6(6)**

Repeal the subsection, substitute:

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- (6) ASIS must not:
- (a) provide weapons; or
  - (b) provide training in the use of weapons; or
  - (c) provide training in the use of force, or the threat of the use of force, against a person; or
  - (d) provide training in the use of self-defence techniques; other than in accordance with Schedule 2 or Schedule 3.

### **3 At the end of section 42**

Add:

- (3) The report must include information about:
- (a) the number of occasions on which force, or the threat of force, against a person by a staff member or agent of ASIS occurred in the course of activities undertaken by ASIS outside Australia during the year; and
  - (b) the broad nature of those occurrences.

### **4 Application of item 3**

The amendment made by item 3 of this Schedule applies in relation to annual reports for the years ending on or after 30 June 2019.

### **5 Schedule 2 (heading)**

Repeal the heading, substitute:

## **Schedule 2—Activities excepted under subsection 6(5) of the Act**

Note: See section 6.

### **6 After subparagraph 1(1)(b)(iii) of Schedule 2**

Insert:

- (iiia) to protect another person, or class of persons, specified in the Minister's approval under subclause (3); or

### **7 At the end of subclause 1(1A) of Schedule 2**

Add:

- ; or (iv) to protect another person, or class of persons, specified in the Minister's approval under subclause (3A).



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**8 Paragraph 1(2)(b) of Schedule 2**

Omit “subparagraphs (1)(b)(i) to (iii)”, substitute “subparagraphs (1)(b)(i) to (iiia)”.

**9 After subclause 1(4) of Schedule 2**

Insert:

- (4A) An approval under subclause (3) for the provision of a weapon or training may specify a person, or class of persons, that may be protected under subparagraph (1)(b)(iiia).
- (4B) An approval under subclause (3A) for the provision of a weapon or training may specify a person, or class of persons, that may be protected under subparagraph (1A)(c)(iv).

**10 Subclause 1(7) of Schedule 2**

After “As soon as practicable after making”, insert “or changing”.

**11 After subclause 1(7) of Schedule 2**

Insert:

- (7A) The Inspector-General of Intelligence and Security must brief the Committee on the content and effect of the guidelines if:
  - (a) the Committee requests the Inspector-General of Intelligence and Security to do so; or
  - (b) the guidelines change.

**12 Clause 3 of Schedule 2**

Repeal the clause, substitute:

**3 Reports to Inspector-General of Intelligence and Security**

- (1) The Director-General of ASIS must give a report to the Inspector-General of Intelligence and Security if a weapon or self-defence technique is used by a staff member or agent of ASIS against a person for a purpose mentioned in any of subparagraphs 1(1)(b)(i) to (iiia).
- (2) The report must:
  - (a) be given in writing as soon as practicable after the weapon or self-defence technique is used; and

- (b) explain the circumstances in which the use of the weapon or self-defence technique occurred.

### 13 At the end of the Act

Add:

## **Schedule 3—Activities excepted under subsection 6(5A) of the Act**

Note: See section 6.

### 1 Provision of weapons, training etc.

- (1) The provision of a weapon, or training in the use of force (including in the use of a weapon), for the purposes of activities undertaken by ASIS outside Australia is not prevented by subsection 6(4) if it is provided:
  - (a) to a person who is a staff member or agent of ASIS; and
  - (b) for the purpose of preventing, mitigating or removing:
    - (i) a significant risk to a person's safety; or
    - (ii) a significant threat to security (within the meaning of paragraphs (a) and (aa) of the definition of *security* in section 4 of the *Australian Security Intelligence Organisation Act 1979*); or
    - (iii) a significant risk to the operational security of ASIS from interference by a foreign person or entity; and
  - (c) in accordance with a Ministerial approval given under paragraph (3)(a).
- (2) The use of force (including the use of a weapon) against a person, or the threat of the use of force (including the use of a weapon) against a person, in the course of activities undertaken by ASIS outside Australia is not prevented by subsection 6(4) if:
  - (a) the conduct is by a staff member or agent of ASIS; and
  - (b) the conduct is for the purpose of preventing, mitigating or removing:
    - (i) a significant risk to a person's safety; or
    - (ii) a significant threat to security (within the meaning of paragraphs (a) and (aa) of the definition of *security* in

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section 4 of the *Australian Security Intelligence Organisation Act 1979*); or

- (iii) a significant risk to the operational security of ASIS from interference by a foreign person or entity; and
- (c) the conduct is in accordance with a Ministerial approval given under paragraph (3)(b); and
- (d) guidelines have been issued by the Director-General of ASIS under clause 2; and
- (e) the conduct is in compliance with those guidelines.

*Minister's approval*

- (3) The Minister may approve:
  - (a) the provision of a weapon, or training in the use of force (including in the use of a weapon) to:
    - (i) a specified staff member or agent of ASIS; or
    - (ii) the holder of a specified position in ASIS;for the purposes of specified activities undertaken by ASIS outside Australia; or
  - (b) the use of force, or the threat of the use of force, against a specified person, or a specified class of persons, by:
    - (i) a specified staff member or agent of ASIS; or
    - (ii) the holder of a specified position in ASIS;in the course of specified activities undertaken by ASIS outside Australia.
- (4) The Minister (the **approving Minister**) must not give approval under paragraph (3)(b) unless:
  - (a) the approving Minister has consulted with:
    - (i) the Prime Minister; and
    - (ii) the Attorney-General; and
    - (iii) the Defence Minister; and
    - (iv) any other Minister who has responsibility for a matter that is likely to be significantly affected by an act that is to be approved; and
  - (b) the approving Minister is satisfied that:
    - (i) there are satisfactory arrangements in place to ensure that, in acting under the approval, nothing will be done

- beyond what is necessary having regard to the purposes for which the approval is given; and
- (ii) there are satisfactory arrangements in place to ensure that the nature and consequences of acts done under the approval will be reasonable having regard to the purposes for which the approval is given.
- (5) An approval under paragraph (3)(a) or (b) must be given by notice in writing to the Director-General of ASIS.
  - (6) The approval must specify:
    - (a) any conditions that must be complied with in relation to the conduct approved; and
    - (b) if the approval is for the provision of a weapon or training in the use of a weapon—the kind or class of weapon involved.
  - (7) The approval is not a legislative instrument.
  - (8) As soon as practicable after giving the Director-General of ASIS an approval under paragraph (3)(a) or (b), the Minister must give a copy of the approval to:
    - (a) the Inspector-General of Intelligence and Security; and
    - (b) if the approval is given under paragraph (3)(b)—the Prime Minister and each other Minister who was consulted about the approval under paragraph (4)(a).

*Annual review of approvals*

- (9) As soon as practicable after each year ending on 30 June, the Minister must:
  - (a) consider whether the approvals in force under paragraphs (3)(a) and (b) at the end of the year are appropriate; and
  - (b) in relation to any approval that is no longer appropriate:
    - (i) amend the approval so that it is appropriate; or
    - (ii) revoke the approval.
- (10) In considering whether an approval in force under paragraph (3)(b) at the end of a year is appropriate, the Minister must take into account whether the Minister is still satisfied of the matters mentioned in paragraph (4)(b).

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- (11) As soon as practicable after subclause (9) has been complied with:
- (a) the Director-General of ASIS must give the Inspector-General of Intelligence and Security a report in writing outlining the action taken under subclause (9); and
  - (b) if any part of the report relates to an approval under paragraph (3)(b)—the Minister must give a copy of that part of the report to the Prime Minister and each other Minister who was consulted about the approval under paragraph (4)(a).

## **2 Guidelines for the purposes of this Schedule**

- (1) The Director-General of ASIS must issue guidelines for the purposes of this Schedule on matters related to:
- (a) the use of force (including the use of weapons) against a person in the course of activities undertaken by ASIS outside Australia; and
  - (b) threats of the use of force (including the use of weapons) against a person in the course of activities undertaken by ASIS outside Australia.
- (2) As soon as practicable after making or changing the guidelines, the Director-General of ASIS must give the Inspector-General of Intelligence and Security a copy of the guidelines.
- (3) The Inspector-General of Intelligence and Security must brief the Committee on the content and effect of the guidelines if:
- (a) the Committee requests the Inspector-General of Intelligence and Security to do so; or
  - (b) the guidelines change.
- (4) Guidelines issued under subclause (1) are not legislative instruments.

## **3 Application of certain State and Territory laws**

A person is not required under, or by reason of, a law of a State or Territory:

- (a) to obtain or have a licence or permission for doing any act or thing in accordance with clause 1; or
- (b) to register any weapon provided in accordance with clause 1.

#### 4 Reports to Inspector-General of Intelligence and Security

- (1) The Director-General of ASIS must give a report to the Inspector-General of Intelligence and Security if force, or the threat of force, is used by a staff member or agent of ASIS against a person for a purpose mentioned in paragraph 1(2)(b) in the course of activities undertaken by ASIS outside Australia.
- (2) The report must:
  - (a) be given in writing as soon as practicable after the force or threat of force is used; and
  - (b) explain the circumstances in which the force or threat of force occurred.
- (3) In this clause:
  - (a) the use of force includes but is not limited to the use of a weapon; and
  - (b) the threat of the use of force includes but is not limited to a threat that involves a weapon.

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*[Minister's second reading speech made in—  
House of Representatives on 29 November 2018  
Senate on 5 December 2018]*

(249/18)

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