



Independent National Security Legislation Monitor Amendment Act 2021

No. 130, 2021

**An Act to amend the *Independent National Security
Legislation Monitor Act 2010*, 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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No. 130, 2021

**An Act to amend the *Independent National Security
Legislation Monitor Act 2010*, and for related
purposes**

[Assented to 8 December 2021]

The Parliament of Australia enacts:

1 Short title

This Act is the *Independent National Security Legislation Monitor
Amendment Act 2021*.

No. 130, 2021 Independent National Security Legislation Monitor Amendment Act 1
2021

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. The whole of this Act	The day this Act receives the Royal Assent.	8 December 2021

Note: This table relates only to the provisions of this Act as originally enacted.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

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

3 Schedules

Legislation that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

Schedule 1—Amendments

Independent National Security Legislation Monitor Act 2010

1 After paragraph 6(1)(b)

Insert:

- (ba) to report on matters relating to the performance of the Monitor’s functions as set out in paragraphs (a) and (b);
- (bb) to report on reviews completed under subsections (1B) and (1C);

2 After paragraph 6(1)(c)

Insert:

- (ca) if a matter is referred to the Monitor by the Committee on Intelligence and Security under section 7A, and the Monitor decides to perform the function under paragraph (1)(a) or (b) in relation to the reference—to report on that reference;

3 Paragraph 6(1)(e)

Repeal the paragraph.

4 Subsection 6(1A)

Omit all the words after “Committee on Intelligence and Security”, substitute “under section 7A, the Monitor may perform the function set out in paragraph (1)(a), (b) or (ca) in relation to the matter”.

5 Subsection 6(1D)

Repeal the subsection.

5A Section 9

Before “When”, insert “(1)”.

5B At the end of section 9

Add:

- (2) Subsection (1) does not apply to the Independent National Security Legislation Monitor's performance of his or her functions under sections 29A (special report) or 29B (statutory review report).

5C Subsection 11(1)

After "part-time", insert "or full-time".

5D After section 11

Insert:

11A Obligation to fill vacancy as soon as practicable

As soon as practicable after the office of Independent National Security Legislation Monitor becomes vacant, a Monitor or acting Monitor must be appointed under section 11 or 20.

5E Section 14

Repeal the section, substitute:

14 Leave of absence

- (1) A full-time Independent National Security Legislation Monitor has the recreation leave entitlements that are determined by the Remuneration Tribunal.
- (2) The Attorney-General may grant leave of absence, other than recreation leave, to a full-time Independent National Security Legislation Monitor on the terms and conditions as to remuneration or otherwise that the Governor-General determines in writing.
- (3) The Attorney-General may grant leave of absence to a part-time Independent National Security Legislation Monitor on the terms and conditions that the Governor-General determines in writing.

5F Section 15

Repeal the section, substitute:

15 Outside employment

- (1) A full-time Independent National Security Legislation Monitor must not engage in paid employment outside the duties of his or her office without the Attorney-General's written consent.
- (2) A part-time Independent National Security Legislation Monitor must not engage in any paid employment that conflicts or may conflict with the proper performance of his or her duties without the Attorney-General's written consent.

5G After paragraph 19(2)(b)

Insert:

- (ba) if the Monitor is appointed on a full-time basis—the Monitor engages, except with the Attorney-General's written consent, in paid employment outside the duties of his or her office;

5H Paragraph 19(2)(c)

After “if the Monitor”, insert “is appointed on a part-time basis—the Monitor”.

5J After paragraph 19(2)(c)

Insert:

- (ca) if the Monitor is appointed on a full-time basis—the Monitor is absent, except on leave of absence granted under subsection 14(2), for 14 consecutive days or for 28 days in any 12 months; or

5K Paragraph 19(2)(d)

Repeal the paragraph, substitute:

- (d) if the Monitor is appointed on a part-time basis—the Monitor is absent, except on leave of absence granted under subsection 14(3), for 7 consecutive days or for 14 days in any 12 months.

6 Paragraph 29(1)(a)

After “and (b)”, insert “, including information relating to the performance of the Monitor's functions as set out in subsection 6(1A)”.

7 After paragraph 29(1)(b)

Insert:

- (1A) Despite paragraph (1)(a), the annual report need not include information described in that paragraph if such information is already included in a report prepared under section 29A.

7AA Subsection 29(5)

Omit all the words after “paragraph (b)”, substitute:

to be presented to each House of the Parliament within the earlier of:

- (c) 15 sitting days of that House after the day on which he or she receives the report; or
- (d) 30 days after the day on which he or she receives the report.

8 After section 29

Insert:

29A Special report

- (1) The Independent National Security Legislation Monitor may, from time to time, prepare and give to the Attorney-General a report (a *special report*) relating to the performance of the Monitor’s functions as set out in paragraphs 6(1)(a), (b) and (ca).
- (2) Before preparing the special report, the Independent National Security Legislation Monitor must give to the Attorney-General and Prime Minister a notice in writing:
 - (a) of his or her intention to prepare the special report; and
 - (b) providing reasons why, in the opinion of the Monitor, the special report is required.
- (3) If the Independent National Security Legislation Monitor considers that a special report contains information of the kind referred to in subsection 29(3), the Monitor must also prepare and give to the Attorney-General, at the same time as the special report, a version of the report which does not contain that information (a *declassified special report*).

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- (4) In determining whether the report contains information of the kind referred to in subsection 29(3), the Independent National Security Legislation Monitor may consult the responsible Minister or responsible Ministers concerned.
 - (5) The Attorney-General must cause a copy of:
 - (a) the special report; or
 - (b) if the special report contains information of the kind referred to in subsection 29(3)—the corresponding declassified special report;to be presented to each House of the Parliament within the earlier of:
 - (c) 15 sitting days of that House after the day on which he or she receives the report; or
 - (d) 30 days after the day on which he or she receives the report.

29B Statutory review report

- (1) This section applies if the Independent National Security Legislation Monitor completes a review under subsection 6(1B) or (1C).
- (2) The Independent National Security Legislation Monitor must prepare and give to the Attorney-General a report relating to the performance of the review (a *statutory review report*).
- (3) If the Independent National Security Legislation Monitor considers that a statutory review report contains information of the kind referred to in subsection 29(3), the Monitor must also prepare and give to the Attorney-General, at the same time as the statutory review report, a version of the report which does not contain that information (a *declassified statutory review report*).
- (4) In determining whether the statutory review report contains information of the kind referred to in subsection 29(3), the Independent National Security Legislation Monitor may consult the responsible Minister or responsible Ministers concerned.
- (5) The Attorney-General must cause a copy of:
 - (a) the statutory review report; or

- (b) if the statutory review report contains information of the kind referred to in subsection 29(3)—the corresponding declassified statutory review report;
to be presented to each House of the Parliament within the earlier of:
 - (c) 15 sitting days of that House after the day on which he or she receives the report; or
 - (d) 30 days after the day on which he or she receives the report.

9A Subsection 30(6)

Omit all the words after “paragraph (b)”, substitute:

- to be presented to each House of the Parliament within the earlier of:
- (c) 15 sitting days of that House after the day on which he or she receives the report; or
 - (d) 30 days after the day on which he or she receives the report.

9 Section 31

Before “No action”, insert “(1)”.

10 Paragraph 31(b)

Omit “or his”, substitute “of his”.

11 At the end of section 31

Add:

- (2) No action, suit or proceeding may be brought against a person who is assisting, or has assisted, the Independent National Security Legislation Monitor under sections 33 or 34 in relation to anything done, or omitted to be done, in good faith by that person:
 - (a) assisting the Monitor in the performance, or purported performance, of his or her functions or duties; or
 - (b) assisting the Monitor in the exercise, or purported exercise, of his or her powers.

12 At the end of Part 5

Add:

33 Staff of the Independent National Security Legislation Monitor

- (1) The Independent National Security Legislation Monitor may be assisted by the following persons, whose services are made available to the Monitor in connection with the performance of any of the Monitor's functions, or the exercise of the Monitor's powers:
 - (a) APS employees in the Department whose services are made available to the Monitor by the Secretary of the Department;
 - (b) employees of Agencies (within the meaning of the *Public Service Act 1999*);
 - (c) persons employed under the *Australian Security Intelligence Organisation Act 1979*;
 - (d) persons employed under the *Intelligence Services Act 2001*;
 - (e) Parliamentary Service employees (within the meaning of the *Parliamentary Service Act 1999*);
 - (f) members of the Australian Defence Force.
- (2) When performing services for the Independent National Security Legislation Monitor, the persons are subject to the directions of the Monitor.
- (3) A person referred to in subsection (1) may only assist the Independent National Security Legislation Monitor with the written consent of the Monitor, and the Monitor may, in writing, withdraw such consent at any time.

34 Contractors engaged by the Independent National Security Legislation Monitor

- (1) The Independent National Security Legislation Monitor may, on behalf of the Commonwealth, engage persons to assist in the performance of any of the Monitor's functions, or the exercise of the Monitor's powers.
- (2) The persons are to be engaged on the terms and conditions that the Independent National Security Legislation Monitor determines in writing.

- (3) When performing services for the Independent National Security Legislation Monitor, a person engaged under subsection (1) is subject to the directions of the Monitor.
 - (4) The Independent National Security Legislation Monitor may, in writing, delegate the Monitor's power under subsection (1) to a member of the staff of the Monitor who is:
 - (a) classified as an Executive Level 2 or equivalent or higher; or
 - (b) acting in a position usually occupied by a person with a classification level of the kind mentioned in paragraph (a).
 - (5) In exercising the power delegated under subsection (4), the delegate is subject to the directions of the Independent National Security Legislation Monitor.
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*[Minister's second reading speech made in—
Senate on 24 June 2021
House of Representatives on 1 December 2021]*

(90/21)
