

2004-2005

The Parliament of the
Commonwealth of Australia

THE SENATE

Presented and read a first time

**Intelligence Services Legislation
Amendment Bill 2005**

No. , 2005

(Defence)

**A Bill for an Act to amend laws relating to
intelligence, and for related purposes**

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1 **A Bill for an Act to amend laws relating to**
2 **intelligence, and for related purposes**

3 The Parliament of Australia enacts:

4 **1 Short title**

5 This Act may be cited as the *Intelligence Services Legislation*
6 *Amendment Act 2005*.

7 **2 Commencement**

8 (1) Each provision of this Act specified in column 1 of the table
9 commences, or is taken to have commenced, in accordance with
10 column 2 of the table. Any other statement in column 2 has effect
11 according to its terms.
12

Commencement information

Column 1	Column 2	Column 3
Provision(s)	Commencement	Date/Details
1. Sections 1 to 3 and anything in this Act not elsewhere covered by this table	The day on which this Act receives the Royal Assent.	
2. Schedules 1 to 8	The 28th day after the day on which this Act receives the Royal Assent.	

1 Note: This table relates only to the provisions of this Act as originally
2 passed by the Parliament and assented to. It will not be expanded to
3 deal with provisions inserted in this Act after assent.

4 (2) Column 3 of the table contains additional information that is not
5 part of this Act. Information in this column may be added to or
6 edited in any published version of this Act.

7 **3 Schedule(s)**

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9 repealed as set out in the applicable items in the Schedule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

1
2 **Schedule 1—Intelligence Services Act 2001**

3 **Part 1—Amendments**

4 **1 Section 3 (definition of *agency*)**

5 After “ASIS”, insert “, DIGO”.

6 **2 Section 3 (after paragraph (a) of the definition of *agency***
7 ***head*)**

8 Insert:

9 (aa) in relation to DIGO—the Director of DIGO; and

10 **3 Section 3 (paragraph (b) of the definition of *agency head*)**

11 After “Director”, insert “of DSD”.

12 **4 Section 3 (definition of *Committee*)**

13 Omit “ASIO, ASIS and DSD”, substitute “Intelligence and Security”.

14 **5 Section 3**

15 Insert:

16 *DIGO* means that part of the Department of Defence known as the
17 Defence Imagery and Geospatial Organisation.

18 **6 Section 3**

19 Insert:

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

22 **7 Section 3 (definition of *Director*)**

23 Repeal the definition.

24 **8 Section 3**

25 Insert:

26 *emergency response function* includes, but is not limited to, a
27 function in relation to:

- 1 (a) search and rescue; or
2 (b) emergency rescue; or
3 (c) response to natural disasters.

4 **9 Section 3**

5 Insert:

6 *foreign power* has the same meaning as in the *Australian Security*
7 *Intelligence Organisation Act 1979*.

8 **10 Section 3**

9 Insert:

10 *incidentally obtained intelligence* means intelligence:

- 11 (a) that is obtained by ASIS in the course of obtaining intelligence
12 under subsection 6(1), by DIGO in the course of obtaining
13 intelligence under paragraph 6B(a), (b) or (c) or by DSD in
14 the course of obtaining intelligence under paragraph 7(a); and
15 (b) that is not intelligence of a kind referred to in those provisions.

16 **11 Section 3 (definition of *intelligence information*)**

17 Repeal the definition, substitute:

18 *intelligence information* means the following:

- 19 (a) information obtained by ASIS under subsection 6(1);
20 (b) information obtained by DIGO under paragraph 6B(a), (b) or
21 (c);
22 (c) information obtained by DSD under paragraph 7(a);
23 (d) incidentally obtained intelligence.

24 **12 Section 3**

25 Insert:

26 *ONA* means the Office of National Assessments established by the
27 *Office of National Assessments Act 1977*.

28 **13 Section 3 (definition of *permanent resident*)**

29 Repeal the definition, substitute:

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permanent resident means:

- (a) a natural person who is a permanent resident within the meaning of the *Australian Security Intelligence Organisation Act 1979*; or
- (b) a body corporate incorporated under a law in force in a State or Territory, other than a body corporate whose activities one or more of the following controls, or is in a position to control, whether directly or indirectly:
 - (i) a foreign power;
 - (ii) a natural person who is neither an Australian citizen nor a person covered by paragraph (a);
 - (iii) a group of natural persons, none of whom is an Australian citizen or a person covered by paragraph (a).

14 Section 3 (paragraph (b) of the definition of *responsible Minister*)

Repeal the paragraph, substitute:

- (b) in relation to an agency—the Minister responsible for the agency; and
- (ba) in relation to DIO—the Minister responsible for DIO; and

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

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

16 Section 3 (paragraph (a) of the definition of *staff member*)

Repeal the paragraph, substitute:

- (a) in relation to ASIO—a member of the staff of ASIO (whether an employee of ASIO, a consultant or contractor to ASIO, or a person who is made available by another Commonwealth or State authority or other person to perform services for ASIO); and

17 Section 3 (paragraphs (b) and (c) of the definition of *staff member*)

Repeal the paragraphs, substitute:

- 1 (b) in relation to an agency—a member of the staff of the agency
2 (whether an employee of the agency, a consultant or
3 contractor to the agency, or a person who is made available by
4 another Commonwealth or State authority or other person to
5 perform services for the agency).

6 **18 At the end of section 6**

7 Add:

- 8 (7) In performing its functions, ASIS is not prevented from providing
9 assistance to Commonwealth authorities, including to the Defence
10 Force in support of military operations, and to State authorities.

11 **19 After section 6A**

12 Insert:

13 **6B Functions of DIGO**

14 The functions of DIGO are:

- 15 (a) to obtain geospatial and imagery intelligence about the
16 capabilities, intentions or activities of people or organisations
17 outside Australia from the electromagnetic spectrum or other
18 sources, for the purposes of meeting the requirements of the
19 Government for such intelligence; and
20 (b) to obtain geospatial and imagery intelligence from the
21 electromagnetic spectrum or other sources for the purposes of
22 meeting the operational, targeting, training and exercise
23 requirements of the Defence Force; and
24 (c) to obtain geospatial and imagery intelligence from the
25 electromagnetic spectrum or other sources for the purposes of
26 supporting Commonwealth authorities and State authorities in
27 carrying out national security functions; and
28 (d) to communicate, in accordance with the Government's
29 requirements, intelligence referred to in paragraph (a), (b) or
30 (c); and
31 (e) to provide to Commonwealth authorities, State authorities and
32 bodies approved in writing by the Minister, the following:
33 (i) imagery and other geospatial products, not being
34 intelligence obtained under paragraph (a), (b) or (c);

- 1 (ii) assistance in relation to the production and use of such
2 imagery or products;
3 (iii) assistance in relation to the performance by those
4 authorities or bodies of emergency response functions.

5 **20 Paragraph 7(d)**

6 Repeal the paragraph, substitute:

- 7 (d) to provide assistance to the Defence Force in support of
8 military operations and to cooperate with the Defence Force
9 on intelligence matters; and
10 (e) to provide assistance to Commonwealth and State authorities
11 in relation to:
12 (i) cryptography, and communication and computer
13 technologies; and
14 (ii) other specialised technologies acquired in connection
15 with the performance of its other functions; and
16 (iii) the performance by those authorities of search and
17 rescue functions.

18 **21 Subsection 8(1)**

19 After “ASIS,” insert “the responsible Minister in relation to DIGO”.

20 **22 Subparagraphs 8(1)(a)(i) and (ii)**

21 Omit “who is overseas”.

22 **23 Subsection 9(1B) (definition of *foreign power*)**

23 Repeal the definition.

24 **24 After section 9**

25 Insert:

26 **9A Authorisations in an emergency**

27 Despite subsections 8(1) to (4) and any direction given under
28 subsection 8(1), if:

- 29 (a) an emergency situation arises in which an agency head
30 considers it necessary or desirable to undertake an activity or
31 a series of activities; and

- 1 (b) a direction under subsection 8(1) requires the agency to obtain
2 an authorisation under section 9 before undertaking that
3 activity or series of activities; and
4 (c) the Minister referred to in the direction is not readily available
5 or contactable;
6 the Prime Minister, the Minister for Defence, the Minister for
7 Foreign Affairs or the Attorney-General may, subject to the
8 requirements of section 9, issue an authorisation under that section
9 in respect of that activity or series of activities.

10 **25 After subsection 10(2)**

11 Insert:

- 12 (2A) If, before an authorisation is cancelled under subsection (2) or
13 otherwise ceases to have effect, the relevant agency head is satisfied
14 that the grounds on which the authorisation was issued have ceased
15 to exist:
16 (a) the agency head must inform the Minister accordingly, and
17 must take the steps necessary to ensure that activities under
18 the authorisation are discontinued; and
19 (b) as soon as practicable after being so informed, the Minister
20 must consider cancelling the authorisation under
21 subsection (2).

22 **26 After section 10**

23 Insert:

24 **10A Agency heads must report on authorised activities**

- 25 (1) An agency head must give to the responsible Minister in relation to
26 the agency a written report in respect of each activity, or series of
27 activities, carried out by the agency in reliance on an authorisation
28 under section 9.
29 (2) The report must be provided to the Minister within 3 months of the
30 day on which the relevant authorisation ceased to have effect.

31 **27 Paragraph 11(2)(c)**

32 After “6(1)(a)”, insert “, 6B(a), (b), or (c)”.

1 **28 Paragraph 11(2)(d)**

2 Repeal the paragraph, substitute:

- 3 (d) in the case of ASIS—providing assistance as mentioned in
4 subsection 6(7); or
5 (e) in the case of DIGO—performing the functions set out in
6 paragraph 6B(e); or
7 (f) in the case of DSD—performing the functions set out in
8 paragraph 7(e).

9 **29 After subsection 11(2)**

10 Insert:

- 11 (2AA) An agency may communicate incidentally obtained intelligence to
12 appropriate Commonwealth or State authorities or to authorities of
13 other countries approved under paragraph 13(1)(c) if the
14 intelligence relates to the involvement, or likely involvement, by a
15 person in one or more of the following activities:
16 (a) activities that present a significant risk to a person’s safety;
17 (b) acting for, or on behalf of, a foreign power;
18 (c) activities that are a threat to security;
19 (d) activities related to the proliferation of weapons of mass
20 destruction or the movement of goods listed from time to time
21 in the Defence and Strategic Goods List (within the meaning
22 of regulation 13E of the *Customs (Prohibited Exports)*
23 *Regulations 1958*);
24 (e) committing a serious crime.

25 **30 Subsection 11(3)**

26 Omit “7(c) and (d)”, substitute “6B(b), (c), (d) and (e) and 7(c), (d) and
27 (e)”.

28 **31 Section 12A**

29 Omit “Both the Director”, substitute “The Director of DIGO, the
30 Director of DSD”.

31 Note: The heading to section 12A is altered by omitting “**Director**” and substituting
32 “**Directors**”.

33 **32 Subsection 14(3) (definition of *staff member*)**

1 After “Director”, insert “of DIGO, the Director of DSD”.

2 **33 Subsection 15(1)**

3 After “ASIS,”, insert “the responsible Minister in relation to DIGO”.

4 **34 After paragraph 15(3)(a)**

5 Insert:

6 (ab) in the case of DIGO—the Director of DIGO; and

7 **35 Paragraph 15(3)(b)**

8 After “Director”, insert “of DSD”.

9 **36 Paragraph 15(3)(c)**

10 Omit “either”, substitute “any”.

11 **37 Subsection 27(1)**

12 After “consultant”, insert “or contractor”.

13 **38 Part 4 (heading)**

14 Repeal the heading, substitute:

15 **Part 4—Committee on Intelligence and Security**

16 **39 Subsection 28(1)**

17 Omit all the words from and including “ASIO” to and including “Act
18 and”, substitute “Intelligence and Security is to be established”.

19 Note: The heading to section 28 is altered by omitting “ASIO, ASIS and DSD” and
20 substituting “**Intelligence and Security**”.

21 **40 Subsection 28(2)**

22 Omit “7 members, 3 of whom must be Senators and 4”, substitute “9
23 members, 4 of whom must be Senators and 5”.

24 **41 Paragraph 29(1)(a)**

25 Omit “and DSD” (first occurring), substitute “, DIGO, DIO, DSD and
26 ONA”.

1 **42 Paragraph 29(1)(a)**

2 Omit “ASIO, ASIS and DSD” (second occurring), substitute “of ASIO,
3 ASIS, DIGO, DIO, DSD and ONA”.

4 **43 Paragraph 29(1)(b)**

5 Omit “or DSD”, substitute “, DIGO, DIO, DSD or ONA”.

6 **44 Subsection 29(2)**

7 Omit “or DSD”, substitute “, DIGO, DIO, DSD or ONA”.

8 **45 Paragraph 29(3)(a)**

9 Repeal the paragraph, substitute:

- 10 (a) reviewing the intelligence gathering and assessment priorities
11 of ASIO, ASIS, DIGO, DIO, DSD or ONA; or

12 **46 Paragraph 29(3)(b)**

13 Omit “or DSD”, substitute “, DIGO, DIO, DSD or ONA”.

14 **47 Paragraph 29(3)(c)**

15 Omit “or DSD”, substitute “, DIGO, DIO or DSD”.

16 **48 Paragraphs 29(3)(e) and (g)**

17 Omit “or DSD” (wherever occurring), substitute “, DIGO, DIO, DSD or
18 ONA”.

19 **49 At the end of subsection 29(3)**

20 Add:

- 21 ; or (h) reviewing the content of, or conclusions reached in,
22 assessments or reports made by DIO or ONA, or reviewing
23 sources of information on which such assessments or reports
24 are based; or

- 25 (i) reviewing the coordination and evaluation activities
26 undertaken by ONA.

27 **50 After paragraph 30(b)**

28 Insert:

- 29 (baa) the Director of DIGO;
-

1 (bab) the Director of DIO;

2 **51 After paragraph 30(ba)**

3 Insert:

4 (bb) the Director-General of ONA;

5 **52 After section 39**

6 Insert:

7 **39A Communication of certain information—DIGO**

8 (1) A person commits an offence if:

- 9 (a) the person communicates any information or matter that was
10 prepared by or on behalf of DIGO in connection with its
11 functions or relates to the performance by DIGO of its
12 functions; and
- 13 (b) the information or matter has come to the knowledge or into
14 the possession of the person by reason of:
- 15 (i) his or her being, or having been, a staff member of
16 DIGO; or
- 17 (ii) his or her having entered into any contract, agreement or
18 arrangement with DIGO; or
- 19 (iii) his or her having been an employee or agent of a person
20 who has entered into a contract, agreement or
21 arrangement with DIGO; and
- 22 (c) the communication was not made:
- 23 (i) to the Director of DIGO or a staff member by the person
24 in the course of the person's duties as a staff member; or
- 25 (ii) to the Director of DIGO or a staff member by the person
26 in accordance with a contract, agreement or
27 arrangement; or
- 28 (iii) by the person in the course of the person's duties as a
29 staff member, within the limits of authority conferred on
30 the person by the Director of DIGO; or
- 31 (iv) with the approval of the Director of DIGO or of a staff
32 member having the authority of the Director of DIGO to
33 give such an approval.

1 Penalty: Imprisonment for 2 years or 120 penalty units, or both.

2 (2) A prosecution for an offence against subsection (1) may be
3 instituted only by the Attorney-General or with the
4 Attorney-General's consent.

5 **53 Paragraph 40(1)(c)**

6 After "Director" (wherever occurring), insert "of DSD".

7 **54 Schedule 1 (heading)**

8 Repeal the heading, substitute:

9 **Schedule 1—Committee on Intelligence and**
10 **Security**

11 **55 Part 1A of Schedule 1 (heading)**

12 Repeal the heading, substitute:

13 **Part 1A—Preliminary**

14 **56 Clause 1A of Schedule 1 (definition of *agency*)**

15 Omit "or DSD", substitute ", DIGO, DIO, DSD or ONA".

16 **57 Clause 1A of Schedule 1 (after paragraph (b) of the**
17 **definition of *agency head*)**

18 Insert:

19 (ba) the Director of DIGO; or

20 (bb) the Director of DIO; or

21 **58 Clause 1A of Schedule 1 (at the end of the definition of**
22 ***agency head*)**

23 Add:

24 ; or (d) the Director-General of ONA.

25 **59 Clause 1A of Schedule 1 (paragraph (a) of the definition of**
26 ***operationally sensitive information*)**

1 Omit “or DSD”, substitute “, DIGO, DIO, DSD or ONA”.

2 **60 Clause 1A of Schedule 1 (paragraph (b) of the definition of**
3 **operationally sensitive information)**

4 Omit “or DSD”, substitute “, DIGO, DIO or DSD”.

5 **61 Clause 1A of Schedule 1**

6 Insert:

7 *staff member*, in relation to an agency, means a member of the staff
8 of the agency (whether an employee of the agency, a consultant or
9 contractor to the agency, or a person who is made available by
10 another Commonwealth or State authority or other person to
11 perform services for the agency).

12 **62 At the end of Part 1A of Schedule 1**

13 Add:

14 **1B Application of provisions of Schedule to subcommittees**

15 Parts 1 and 2 and clauses 20, 21 and 22 of this Schedule apply to a
16 subcommittee appointed under clause 23 as if:

17 (a) references to the Committee included references to the
18 subcommittee; and

19 (b) references to the Chair of the Committee included references
20 to a member of the subcommittee authorised by the
21 subcommittee for the purpose of the provision concerned.

22 Note: The heading to clause 3 of Schedule 1 is altered by omitting “ASIO, ASIS and DSD”
23 and substituting “agencies”.

24 **63 Paragraph 7(1)(a) of Schedule 1**

25 After “ASIS” (second occurring), insert “, DIGO”.

26 **64 After clause 16 of Schedule 1**

27 Insert:

1 **16A Deputy Chair**

- 2 (1) There must be a Deputy Chair of the Committee who must be a
3 Government member elected by the members from time to time.
- 4 (2) The Deputy Chair holds office during the pleasure of the
5 Committee.
- 6 (3) A person holding office as Deputy Chair ceases to hold the office if:
7 (a) the person ceases to be a member; or
8 (b) the person resigns the office.
- 9 (4) A person holding office as Deputy Chair may resign the office by
10 giving a signed notice of resignation to a meeting of the Committee.

11 **65 Paragraph 18(1)(a) of Schedule 1**

12 Omit “4”, substitute “5”.

13 **66 Subclause 20(2) of Schedule 1**

14 Repeal the subclause, substitute:

- 15 (2) The Committee must not conduct a review in public without the
16 approval of:
17 (a) the Minister responsible for ASIO; and
18 (b) the Minister responsible for ASIS; and
19 (c) the Minister responsible for DIGO, DIO and DSD; and
20 (d) the Minister responsible for ONA.

21 **67 At the end of Schedule 1**

22 Add:

23 **Part 4—Subcommittees**
24

25 **23 Subcommittees**

- 26 (1) The Committee may appoint one or more subcommittees of at least
27 3 of its members to inquire into and report to the Committee upon
28 such matters with which the Committee is concerned as the
29 Committee directs.

1 (2) A subcommittee must report in writing to the Committee as soon as
2 practicable on each matter referred to that subcommittee by the
3 Committee.

4 (3) A subcommittee may sit at any time, including at a time when the
5 Committee is sitting.

6 **24 Term of office**

7 (1) A member of a subcommittee holds office during the pleasure of the
8 Committee.

9 (2) A member of a subcommittee ceases to hold office if:

10 (a) the person ceases to be a member of the Committee; or

11 (b) the person resigns the office.

12 (3) A member of a subcommittee may resign his or her office by giving
13 a signed notice of resignation to the Chair of the Committee.

14 **25 Operation of subcommittees**

15 (1) A subcommittee may determine matters relating to the operation of
16 the subcommittee, except as mentioned in subsection (2).

17 (2) If the Chair of the Committee gives a direction to a subcommittee in
18 relation to the operation of the subcommittee, the subcommittee
19 must operate in accordance with the direction.

1

2 **Part 2—Application and transitional provisions**

3 **68 Application of amendment relating to cancellation of**
4 **certain authorised operations**

5 The amendment made by item 25 applies to:

- 6 (a) authorisations in force under section 9 of the *Intelligence*
7 *Services Act 2001* at the time of the commencement of that
8 item; and
9 (b) authorisations given under that section after the
10 commencement of that item.

11 **69 Application of amendment relating to reports of**
12 **authorised operations**

13 The amendment made by item 26 applies to an activity, or series of
14 activities, authorised under section 9 of the *Intelligence Services Act*
15 *2001* after the commencement of that item.

16 **70 Committee on Intelligence and Security—transitional**
17 **provision**

- 18 (1) This item applies to the Parliamentary Joint Committee on ASIO, ASIS
19 and DSD (the *Committee*) that was in existence under the *Intelligence*
20 *Services Act 2001* immediately before the commencement of this item.
- 21 (2) The Committee continues in existence by force of this item, after the
22 commencement of this item, as the Parliamentary Joint Committee on
23 Intelligence and Security under the *Intelligence Services Act 2001*,
24 subject to the amendments made by this Schedule.
- 25 (3) A person who held office as a member of the Committee immediately
26 before the commencement of this item is taken to have been appointed,
27 immediately after that commencement, as a member of the Parliamentary
28 Joint Committee on Intelligence and Security.
- 29 (4) The person who held office as Chair of the Committee immediately
30 before the commencement of this item is taken to have been elected,
31 immediately after that commencement, as Chair of the Parliamentary
32 Joint Committee on Intelligence and Security.

Schedule 1 Intelligence Services Act 2001
Part 2 Application and transitional provisions

- 1 (5) If the Committee was conducting a review immediately before
2 commencement:
3 (a) the Parliamentary Joint Committee on Intelligence and
4 Security may continue the review after that commencement;
5 and
6 (b) anything done for the purposes of the review before
7 commencement is taken to have been done for the purposes of
8 the review as continued in accordance with this item.

1
2 **Schedule 2—Inspector-General of Intelligence**
3 **and Security Act 1986**

4 **Part 1—Amendments relating to DIGO**

5 **1 Subsection 3(1) (definition of *agency*)**

6 After “ASIS,” insert “DIGO,”.

7 **2 Subsection 3(1)**

8 Insert:

9 *DIGO* means that part of the Department of Defence known as the
10 Defence Imagery and Geospatial Organisation, and any part of the
11 Defence Force that performs functions on behalf of that part of the
12 Department.

13 **3 Subsection 3(1) (definition of *head*)**

14 After “ASIS,” (first occurring), insert “DIGO,”.

15 **4 Subsection 3(1) (definition of *head*)**

16 After “ASIS,” (second occurring), insert “the Director of DIGO,”.

17 **5 Subsection 8(2)**

18 After “ASIS”, insert “, DIGO”.

19 **6 Subsection 8(4)**

20 After “ASIS”, insert “, DIGO”.

21 **7 Paragraphs 32A(1)(d) and (5)(b)**

22 Before “DIO”, insert “DIGO,”.

23 **8 Subsection 32B(1)**

24 After “ASIS”, insert “, DIGO”.

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2 **Part 2—Other amendments**

3 **9 Subsection 3(1)**

4 Insert:

5 *Ombudsman* means the Commonwealth Ombudsman.

6 **10 Paragraph 8(3)(a)**

7 After “Minister”, insert “or of the Inspector-General’s own motion”.

8 **11 At the end of subsection 8(3)**

9 Add:

10 ; and (c) at the request of the responsible Minister or of the
11 Inspector-General’s own motion, to inquire into any matter in
12 relation to the statutory independence of ONA.

13 **12 Subsection 8(7)**

14 After “ASIO” (first occurring), insert “or ASIS”.

15 **13 Subsection 8(7)**

16 Omit “other than the Director-General of Security or employees of
17 ASIO”, substitute:

18 other than:

19 (a) in the case of an employee of ASIO—the Director-General of
20 Security or employees of ASIO; or

21 (b) in the case of an employee of ASIS—the Director-General of
22 ASIS or employees of ASIS.

23 **14 At the end of Division 1 of Part II**

24 Add:

25 **9B Power to enter places of detention**

26 The Inspector-General may, after notifying the Director-General of
27 Security, at any reasonable time, enter any place where a person is
28 being detained under Division 3 of Part III of the *Australian*

1 *Security Intelligence Organisation Act 1979* for the purposes of an
2 inspection under section 9A.

3 **15 Section 15**

4 Before “The Inspector-General”, insert “(1)”.

5 Note: The heading to section 15 is altered by omitting “**Minister and agency head**” and
6 substituting “**certain persons**”.

7 **16 Section 15**

8 After “Minister and”, insert “, subject to subsections (2) and (3),”.

9 **17 At the end of section 15**

10 Add:

11 (2) The Inspector-General is not required by subsection (1) to advise
12 the head of an agency that the Inspector-General proposes to
13 conduct an inquiry into a matter that relates directly to the head of
14 the agency.

15 (3) However, if the Inspector-General does not advise the head of an
16 agency that the Inspector-General proposes to conduct an inquiry
17 into a matter that relates directly to the head of the agency, the
18 Inspector-General must instead advise:

19 (a) if the matter relates to the head of ASIO, ASIS or ONA—the
20 responsible Minister in relation to ASIO, ASIS or ONA, as
21 the case requires; or

22 (b) if the matter relates to the head of DIGO, DIO or DSD—the
23 Secretary of the Department of Defence.

24 (4) To avoid doubt, this section is subject to section 17.

25 **18 Section 16**

26 After “Auditor-General” (first occurring), insert “and the Ombudsman”.

27 Note: The heading to section 16 is altered by adding at the end “**and Ombudsman**”.

28 **19 Section 16**

29 After “Auditor-General” (second occurring), insert “or the
30 Ombudsman”.

1 **20 Section 16**

2 Omit “by both the Inspector-General and the Auditor-General”,
3 substitute “by the Inspector-General and either or both of the
4 Auditor-General and the Ombudsman”.

5 **21 Section 19**

6 Omit “(1)”.

7 **22 After section 19**

8 Insert:

9 **19A Power to enter places of detention**

10 The Inspector-General may, after notifying the Director-General of
11 Security, at any reasonable time, enter any place where a person is
12 being detained under Division 3 of Part III of the *Australian*
13 *Security Intelligence Organisation Act 1979* for the purposes of an
14 inquiry under this Act.

15 **23 Subsection 21(1)**

16 Before “shall” (second occurring), insert “, subject to subsections (1A)
17 and (1B),”.

18 **24 After subsection 21(1)**

19 Insert:

20 (1A) The Inspector-General is not required by subsection (1) to give to
21 the head of an agency a copy of a draft report setting out
22 conclusions and recommendations in respect of a matter that relates
23 directly to the head of the agency.

24 (1B) However, if the Inspector-General does not give to the head of an
25 agency a copy of a draft report setting out conclusions and
26 recommendations in respect of a matter that relates directly to the
27 head of the agency, the Inspector-General must give a copy of that
28 report to:

29 (a) if the matter relates to the head of ASIO, ASIS or ONA—the
30 responsible Minister in relation to ASIO, ASIS or ONA, as
31 the case requires; or

1 (b) if the matter relates to the head of DIGO, DIO or DSD—the
2 Secretary of the Department of Defence.

3 (1C) To avoid doubt, subsections (1), (1A) and (1B) are subject to
4 section 17.

5 **25 Paragraph 21(2)(a)**

6 After “agency”, insert “, a responsible Minister or the Secretary of the
7 Department of Defence”.

8 **26 Paragraph 21(2)(b)**

9 After “agency”, insert “, the responsible Minister or the Secretary”.

10 **27 Subsection 22(1)**

11 Omit “report to the head of the agency.”, substitute:
12 report:

- 13 (a) if a copy of the draft report was given to the head of the
14 agency under subsection 21(1)—to the head of the agency; or
15 (b) otherwise—to the person to whom a copy of the draft report
16 was given under subsection 21(1B).

17 Note: The heading to section 22 is altered by adding at the end “**given to agency head**”.

18 **28 After section 24**

19 Insert:

20 **24A Action as a result of reports given to Minister or Secretary**

21 (1) This section applies if the Inspector-General:

- 22 (a) has conducted an inquiry under this Act into a matter relating
23 to an agency; and
24 (b) has given a copy of the report in relation to the inquiry to the
25 responsible Minister in relation to the agency, or to the
26 Secretary of the Department of Defence, because of the
27 operation of subsection 21(1B).

28 (2) If the responsible Minister or the Secretary takes or proposes to take
29 any action as a result of the conclusions and recommendations set
30 out in the report, he or she must give to the Inspector-General
31 details of the action taken or proposed to be taken.

- 1 (3) If, in the opinion of the Inspector-General, the responsible Minister
2 or the Secretary does not take, within a reasonable period, action
3 that is adequate and appropriate in the circumstances:
4 (a) the Inspector-General may prepare a report relating to that
5 matter; and
6 (b) if the Inspector-General prepares such a report, he or she must
7 give a copy of the report to the Prime Minister.

8 **29 Subsection 35(2)**

9 After “8(1)(d)”, insert “or 8(3)(c)”.

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2 **Schedule 3—Office of National Assessments**
3 **Act 1977**
4

5 **1 Section 3 (definition of Assessments Board or Board)**

6 Repeal the definition.

7 **2 Section 3**

8 Insert:

9 *Department of Defence* means the Department administered by the
10 Minister administering section 1 of the *Defence Act 1903*.

11 **3 Section 3**

12 Insert:

13 *Department of Foreign Affairs and Trade* means the Department
14 administered by the Minister administering the *Diplomatic*
15 *Privileges and Immunities Act 1967*.

16 **4 Paragraph 5(1)(d)**

17 Repeal the paragraph, substitute:

18 (d) to carry out the coordination and evaluation functions
19 specified in subsections (1A) and (1B).

20 **5 After subsection 5(1)**

21 Insert:

22 (1A) The coordination functions of the Office are:

- 23 (a) to coordinate the foreign intelligence activities that Australia
24 engages in, including in relation to setting Australia's foreign
25 intelligence requirements based on Australia's foreign
26 intelligence priorities; and
27 (b) to coordinate matters of common interest to Australia's
28 foreign intelligence agencies, including, but not limited to, the
29 following:
30 (i) policy in relation to foreign intelligence;

- 1 (ii) long-term planning and cross-agency planning in relation
2 to foreign intelligence;
3 (iii) liaison with international partners, consistent with the
4 capacity of the agencies to develop relationships with
5 their counterparts in other countries.

6 (1B) The evaluation functions of the Office are:

- 7 (a) to evaluate the foreign intelligence activities that Australia
8 engages in, having regard to:
9 (i) Australia's foreign intelligence priorities and
10 requirements; and
11 (ii) the intelligence needs of relevant Ministers; and
12 (b) to provide advice to the Minister or to relevant Departments
13 on the adequacy of the resources available for foreign
14 intelligence activities; and
15 (c) to provide advice to the Minister on any improvements or
16 changes that should be made to remedy inadequacies,
17 including, but not limited to, inadequacies relating to
18 coordination arrangements.

19 **6 Subsection 6(1)**

20 Omit "subsection (2)", substitute "subsections (2A) and (2B)".

21 **7 Subsection 6(2)**

22 Repeal the subsection, substitute:

23 (2) It is the function of the National Assessments Board to consider
24 national assessments made by the Office.

25 (2A) The membership of the National Assessments Board may be varied
26 by the Director-General from time to time, but must include:

- 27 (a) the persons specified in subsection (1); and
28 (b) an officer of the Department of Foreign Affairs and Trade;
29 and
30 (c) an officer of the Department of Defence; and
31 (d) an officer of the Department of the Prime Minister and
32 Cabinet; and
33 (e) a member of the Defence Force.

1 (2B) The Director-General is to take reasonable steps to ensure that a
2 meeting of the National Assessments Board includes representatives
3 of departments and agencies appropriate to the subject matter of the
4 national assessment or national assessments under consideration by
5 the Board at that meeting.

6 **8 Subsection 6(5)**

7 Repeal the subsection.

8 **9 Section 7**

9 Repeal the section.

10 **10 Subsection 8(1)**

11 Omit “appropriate”, substitute “National”.

12 Note: The heading to section 8 is altered by omitting “**relevant**” and substituting
13 “**National**”.

14 **11 Subsection 8(1)**

15 Before “assessment” (first occurring), insert “national”.

16 **12 Subsection 8(2)**

17 Omit “an Assessments”, substitute “the National Assessments”.

18 **13 Subsection 8(2)**

19 Omit “an assessment”, substitute “a national assessment”.

20 **14 Subsection 8(3)**

21 Before “Board”, insert “National Assessments”.

22 **15 Subsection 8(3)**

23 Before “assessment”, insert “national”.

24 **16 Subsection 12(4)**

25 Repeal the subsection.

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Schedule 4—Australian Security Intelligence Organisation Act 1979

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1 At the end of section 29

Add:

- (4) The Director-General must, within 3 working days after issuing a warrant under this section, give a copy of the warrant to the Inspector-General of Intelligence and Security.

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Schedule 5—Telecommunications (Interception) Act 1979

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1 At the end of section 10

Add:

- (5) The Director-General must, within 3 working days after issuing a warrant under this section, give a copy of the warrant to the Inspector-General of Intelligence and Security.

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Schedule 6—Privacy Act 1988

1 Sub-subparagraph 7(1)(a)(B)

Before “Part”, insert “Division 1 of”.

2 After paragraph 7(1)(c)

Insert:

(ca) an act done, or a practice engaged in, as the case may be, by a part of the Department of Defence specified in Division 2 of Part I of Schedule 2 to the *Freedom of Information Act 1982*, other than an act done, or a practice engaged in, in relation to the activities of that part of the Department; or

3 Paragraph 7(1)(g)

After “Organisation”, insert “, the Defence Imagery and Geospatial Organisation”.

4 At the end of subsection 7(1A)

Add:

; or (c) the Defence Signals Directorate of the Department of Defence.

5 Paragraph 7(2)(b)

After “Organisation”, insert “, the Defence Imagery and Geospatial Organisation”.

Schedule 7—Freedom of Information Act 1982

1 Subsection 4(1)

Insert:

Defence Imagery and Geospatial Organisation means that part of the Department of Defence known as the Defence Imagery and Geospatial Organisation.

2 Subsection 4(1)

Insert:

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

3 Subsection 4(1)

Insert:

Defence Signals Directorate means that part of the Department of Defence known as the Defence Signals Directorate.

4 Subsection 7(1)

Before “Part I”, insert “Division 1 of”.

5 Subsection 7(1)

Omit “Part” (second occurring), substitute “Division”.

6 After subsection 7(1)

Insert:

(1A) For the purposes of the definition of *agency*, a part of the Department of Defence specified in Division 2 of Part I of Schedule 2:

- (a) is taken not to be included in the Department of Defence (or in any other Department) for the purposes of this Act; and
- (b) to avoid doubt, is not an agency in its own right for the purposes of this Act.

1 **7 Subsection 7(2A)**

2 Before “Defence Intelligence”, insert “Defence Imagery and Geospatial
3 Organisation, the”.

4 **8 Subsection 16(2)**

5 Omit all the words after “shall be”, substitute:
6 transferred:

- 7 (c) to the Department corresponding to the Department of State
8 administered by the Minister who administers the enactment
9 by or under which the body or person is established, continued
10 in existence or appointed; or
11 (d) if the request relates to a document that originated with, or has
12 been received from, a part of the Department of Defence
13 specified in Division 2 of Part I of Schedule 2—to that
14 Department.

15 **9 Subsection 51C(2)**

16 Omit all the words after “must”, substitute:
17 transfer the application:

- 18 (c) to the Department corresponding to the Department of State
19 administered by the Minister who administers the enactment
20 by or under which the body or person is established, continued
21 in existence or appointed; or
22 (d) if the application relates to a document that originated with, or
23 has been received from, a part of the Department of Defence
24 specified in Division 2 of Part I of Schedule 2—to that
25 Department.

26 **10 After the heading to Part I of Schedule 2**

27 Insert:

28 **Division 1**

29 **11 At the end of Part I of Schedule 2**

30 Add:

1 **Division 2**

Defence Imagery and Geospatial Organisation

Defence Intelligence Organisation

Defence Signals Directorate

2 **12 Part II of Schedule 2**

3 Omit:

Department of Defence, in relation to documents in respect of
activities of the Defence Intelligence Organisation and the
Defence Signals Directorate

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2 **Schedule 8—Consequential amendments of**
3 **other Acts**

4 **Part 1—Consequential amendments relating to DIGO**

5 *Archives Act 1983*

6 **1 After paragraph 29(8)(b)**

7 Insert:

8 (ba) the Defence Imagery and Geospatial Organisation;

9 *Australian Security Intelligence Organisation Act 1979*

10 **2 Section 4 (definition of *intelligence or security agency*)**

11 Repeal the definition, substitute:

12 *intelligence or security agency* means any of the following:

- 13 (a) the Australian Secret Intelligence Service;
- 14 (b) the Office of National Assessments;
- 15 (c) that part of the Department of Defence known as the Defence
- 16 Imagery and Geospatial Organisation;
- 17 (d) that part of the Department of Defence known as the Defence
- 18 Intelligence Organisation;
- 19 (e) that part of the Department of Defence known as the Defence
- 20 Signals Directorate.

21 *Crimes Act 1914*

22 **3 Section 85ZL (at the end of paragraphs (a), (b) and (c) of**
23 **the definition of *intelligence or security agency*)**

24 Add “or”.

25 **4 Section 85ZL (at the end of the definition of *intelligence or***
26 ***security agency*)**

27 Add:

1 ; or (f) that part of the Department of Defence known as the Defence
2 Imagery and Geospatial Organisation.

3 ***Crimes (Overseas) Act 1964***

4 **5 Section 3**

5 Insert:

6 ***DIGO*** has the same meaning as in the *Intelligence Services Act*
7 2001.

8 **6 Section 3 (definition of *staff member*)**

9 After “ASIS”, insert “, DIGO”.

10 **7 Paragraph 3A(10)(b)**

11 After “ASIS” (wherever occurring), insert “, DIGO”.

12 Note: The heading to subsection 3A(10) is altered by inserting “, *DIGO*” after “ASIS”.

13 **8 Subsection 3A(10) (paragraph (a) of the note)**

14 After “ASIS”, insert “, DIGO”.

15 ***Criminal Code Act 1995***

16 **9 Subsection 476.5(1) of the *Criminal Code***

17 After “ASIS”, insert “, DIGO”.

18 **10 Subsection 476.5(3) of the *Criminal Code***

19 Insert:

20 ***DIGO*** means that part of the Department of Defence known as the
21 Defence Imagery and Geospatial Organisation.

22 **11 Subsection 476.5(3) of the *Criminal Code* (paragraphs (a)
23 and (b) of the definition of *staff member*)**

24 After “consultant”, insert “or contractor”.

25 **12 Subsection 476.5(3) of the *Criminal Code* (at the end of
26 the definition of *staff member*)**

Schedule 8 Consequential amendments of other Acts

Part 1 Consequential amendments relating to DIGO

1 Add:
2 ; and (c) in relation to DIGO—the Director of DIGO or a member of
3 the staff of DIGO (whether an employee of DIGO, a
4 consultant or contractor to DIGO, or a person who is made
5 available by another Commonwealth or State authority or
6 other person to perform services for DIGO).

7 ***Human Rights and Equal Opportunity Commission Act 1986***

8 **13 Subsection 11(4)**

9 Before “or that part”, insert “, that part of the Department of Defence
10 known as the Defence Imagery and Geospatial Organisation (including
11 any part of the Defence Force that performs functions on behalf of that
12 part of the Department)”.

13 **14 Subsection 21(3)**

14 Before “Defence Intelligence Organisation”, insert “Defence Imagery and
15 Geospatial Organisation, the”.

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**Part 2—Consequential amendments relating to the
Parliamentary Joint Committee on
Intelligence and Security**

Australian Security Intelligence Organisation Act 1979

**15 Section 4 (definition of *Committee on ASIO, ASIS and
DSD*)**

Repeal the definition.

16 Section 4

Insert:

Committee on Intelligence and Security means the Parliamentary
Joint Committee on Intelligence and Security established under the
Intelligence Services Act 2001.

17 Subsection 8A(6)

Omit “ASIO, ASIS and DSD”, substitute “Intelligence and Security”.

18 Paragraph 34C(3A)(e)

Omit “ASIO, ASIS and DSD”, substitute “Intelligence and Security”.

19 Subsection 92(1)

Omit “ASIO, ASIS and DSD”, substitute “Intelligence and Security”.