



Intelligence Services Act 2001

No. 152, 2001



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An Act relating to the Australian intelligence services, and for related purposes

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Intelligence Services Act 2001

No. 152, 2001

An Act relating to the Australian intelligence services, and for related purposes

[Assented to 1 October 2001]

The Parliament of Australia enacts:

Part 1—Preliminary

1 Short title

This Act may be cited as the *Intelligence Services Act 2001*.

2 Commencement

This Act commences 28 days after the day on which it receives the Royal Assent.

3 Definitions

In this Act, unless the contrary intention appears:

agency means ASIS or DSD.

agency head means:

- (a) in relation to ASIS—the Director-General; and
- (b) in relation to DSD—the Director.

ASIO means the Australian Security Intelligence Organisation.

ASIS means the Australian Secret Intelligence Service.

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

Australian person means a person who is:

- (a) an Australian citizen; or
- (b) a permanent resident.

Chair means the Chair of the Committee.

Committee means the Parliamentary Joint Committee on ASIO, ASIS and DSD.

Commonwealth authority includes:

- (a) an Agency within the meaning of the *Public Service Act 1999*; and
- (b) a Department within the meaning of the *Parliamentary Service Act 1999*; and
- (c) the Defence Force; and
- (d) a body (whether incorporated or not) established, or continued in existence, for a public purpose by or under a law of the Commonwealth; and
- (e) a body corporate in which the Commonwealth or a body referred to in paragraph (d) has a controlling interest.

court includes a tribunal, authority or person that has power to require the production of documents or the answering of questions.

Director means the Director of DSD.

Director-General means the Director-General of ASIS.

Director-General of Security means the Director-General of Security holding office under the *Australian Security Intelligence Organisation Act 1979*.

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

Inspector-General of Intelligence and Security means the Inspector-General of Intelligence and Security appointed under the *Inspector-General of Intelligence and Security Act 1986*.

intelligence information means information obtained by ASIS under paragraph 6(1)(a), or by DSD under paragraph 7(a).

member means a member of the Committee, and includes the Chair.

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paramilitary activities means activities involving the use of an armed unit (or other armed group) that is not part of a country's official defence or law enforcement forces.

permanent resident has the same meaning as in section 4 of the *Australian Security Intelligence Organisation Act 1979*.

police functions means:

- (a) the arrest, charging or detention of suspected offenders; or
- (b) any other activity undertaken for the purposes of prosecuting, or for determining whether to prosecute, an offence.

responsible Minister means:

- (a) in relation to ASIO—the Minister responsible for ASIO; and
- (b) in relation to ASIS—the Minister responsible for ASIS; and
- (c) in relation to DSD—the Minister responsible for DSD.

serious crime means conduct that, if engaged in within, or in connection with, Australia, would constitute an offence against the law of the Commonwealth, a State or a Territory punishable by imprisonment for a period exceeding 12 months.

staff member means:

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

State authority includes:

- (a) a Department of State of a State or Territory or a Department of the Public Service of a State or Territory; and

- (b) a body (whether incorporated or not) established, or continued in existence, for a public purpose by or under a law of a State or Territory; and
- (c) a body corporate in which a State, Territory or a body referred to in paragraph (b) has a controlling interest.

4 Extension to external Territories

This Act extends to every external Territory.

5 Application of *Criminal Code*

- (1) Chapter 2 of the *Criminal Code* applies to all offences against this Act.

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

- (2) Section 15.4 of the *Criminal Code* (extended geographical jurisdiction—category D) applies to all offences against this Act.

Part 2—Functions of the agencies

6 Functions of ASIS

- (1) The functions of ASIS are:
 - (a) to obtain, in accordance with the Government's requirements, intelligence about the capabilities, intentions or activities of people or organisations outside Australia; and
 - (b) to communicate, in accordance with the Government's requirements, such intelligence; and
 - (c) to conduct counter-intelligence activities; and
 - (d) to liaise with intelligence or security services, or other authorities, of other countries; and
 - (e) to undertake such other activities as the responsible Minister directs relating to the capabilities, intentions or activities of people or organisations outside Australia.
- (2) The responsible Minister may direct ASIS to undertake activities referred to in paragraph (1)(e) only if the Minister:
 - (a) has consulted other Ministers who have related responsibilities; and
 - (b) is satisfied that there are satisfactory arrangements in place to ensure that, in carrying out the direction, nothing will be done beyond what is necessary having regard to the purposes for which the direction is given; and
 - (c) is satisfied that there are satisfactory arrangements in place to ensure that the nature and consequences of acts done in carrying out the direction will be reasonable having regard to the purposes for which the direction is given.
- (3) A direction under paragraph (1)(e) must be in writing.
- (4) In performing its functions, ASIS must not plan for, or undertake, paramilitary activities or activities involving violence against the person or the use of weapons.

Note 1A: For *paramilitary activities* see section 3.

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- Note 1: For other limits on the agency's functions and activities see sections 11 and 12.
- Note 2: If the Minister gives a direction under paragraph (1)(e), the Minister must give a copy of the direction to the Inspector-General of Intelligence and Security as soon as practicable after the direction is given to the head of ASIS (see section 32B of the *Inspector-General of Intelligence and Security Act 1986*).

6A Committee to be advised of other activities

If the responsible Minister gives a direction under paragraph 6(1)(e), the Minister must as soon as practicable advise the Committee of the nature of the activity or activities to be undertaken.

Note: For *Committee* see section 3.

7 Functions of DSD

The functions of DSD are:

- (a) to obtain intelligence about the capabilities, intentions or activities of people or organisations outside Australia in the form of electromagnetic energy, whether guided or unguided or both, or in the form of electrical, magnetic or acoustic energy, for the purposes of meeting the requirements of the Government, and in particular the requirements of the Defence Force, for such intelligence; and
- (b) to communicate, in accordance with the Government's requirements, such intelligence; and
- (c) to provide material, advice and other assistance to Commonwealth and State authorities on matters relating to the security and integrity of information that is processed, stored or communicated by electronic or similar means; and
- (d) to provide assistance to Commonwealth and State authorities in relation to cryptography and communications technologies.

Note: For limits on the agency's functions and activities see sections 11 and 12.

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8 Ministerial directions

- (1) The responsible Minister in relation to ASIS, and the responsible Minister in relation to DSD, must issue a written direction under this subsection to the relevant agency head. The direction must:
 - (a) require the agency to obtain an authorisation under section 9 from the Minister before:
 - (i) undertaking an activity, or a series of activities, for the specific purpose, or for purposes which include the specific purpose, of producing intelligence on an Australian person who is overseas; or
 - (ii) undertaking, in accordance with a direction under paragraph 6(1)(e), an activity, or a series of activities, that will, or is likely to, have a direct effect on an Australian person who is overseas; and
 - (b) specify the circumstances in which the agency must, before undertaking other activities or classes of activities, obtain an authorisation under section 9 from the Minister.
- (2) The responsible Minister may give written directions to be observed:
 - (a) in the performance by the relevant agency of its functions; or
 - (b) in the case of ASIS—in the exercise of the powers of the Director-General under section 33 or 34.
- (3) Each agency head must ensure that the agency complies with any direction given by the responsible Minister under this section.
- (4) Directions under paragraph (2)(b) must not relate to a specific staff member.

Note: The Inspector-General of Intelligence and Security has oversight powers in relation to Ministerial directions and authorisations given under this Act. See in particular section 32B of the *Inspector-General of Intelligence and Security Act 1986* (which requires the Minister to give a copy of a direction under this section to the Inspector-General of Intelligence and Security as soon as practicable after the direction is given).

9 Ministerial authorisation

- (1) Before a Minister gives an authorisation under this section, the Minister must be satisfied that:
- (a) any activities which may be done in reliance on the authorisation will be necessary for the proper performance of a function of the agency concerned; and
 - (b) there are satisfactory arrangements in place to ensure that nothing will be done in reliance on the authorisation beyond what is necessary for the proper performance of a function of the agency; and
 - (c) there are satisfactory arrangements in place to ensure that the nature and consequences of acts done in reliance on the authorisation will be reasonable, having regard to the purposes for which they are carried out.
- (1A) Before a Minister gives an authorisation under this section for an activity, or a series of activities, of a kind mentioned in subparagraph 8(1)(a)(i) or (ii), the Minister must also:
- (a) be satisfied that the Australian person mentioned in that subparagraph is, or is likely to be, involved in one or more of the following activities:
 - (i) activities that present a significant risk to a person's safety;
 - (ii) acting for, or on behalf of, a foreign power;
 - (iii) activities that are, or are likely to be, a threat to security;
 - (iv) activities related to the proliferation of weapons of mass destruction or the movement of goods listed from time to time in the Defence and Strategic Goods List (within the meaning of regulation 13E of the *Customs (Prohibited Exports) Regulations 1958*);
 - (v) committing a serious crime by moving money, goods or people;
 - (vi) committing a serious crime by using or transferring intellectual property;
 - (vii) committing a serious crime by transmitting data or signals by means of guided and/or unguided electromagnetic energy; and

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- (b) if the Australian person is, or is likely to be, involved in an activity or activities that are, or are likely to be, a threat to security (whether or not covered by another subparagraph of paragraph (a) in addition to subparagraph (a)(iii))—obtain the agreement of the Minister responsible for administering the *Australian Security Intelligence Organisation Act 1979*.

(1B) In subsection (1A):

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

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

Note: For **serious crime** see section 3.

- (2) The Minister may give an authorisation in relation to:
 - (a) an activity, or class of activities, specified in the authorisation; or
 - (b) acts of a staff member or agent, or a class of staff members or agents, specified (whether by name or otherwise) in the authorisation; or
 - (c) activities done for a particular purpose connected with the agency's functions.
- (3) An authorisation is subject to any conditions specified in it.
- (4) An authorisation must be in writing and must specify how long it will have effect. The period of effect specified in an authorisation for an activity, or a series of activities, of a kind mentioned in subparagraph 8(1)(a)(i) or (ii), must not exceed 6 months.
- (5) If a Minister gives an authorisation under this section in relation to an agency, the relevant agency head must ensure that a copy of the authorisation is kept by the agency and is available for inspection on request by the Inspector-General of Intelligence and Security.

10 Period during which authorisation has effect etc.

- (1) The Minister may, at any time before the day on which an authorisation would cease to have effect, renew it for the length of time specified in the renewal. However, the authorisation must not be renewed unless the Minister is satisfied that it is necessary, for the purpose for which the authorisation was given, for the authorisation to continue to have effect.
- (1A) The renewal (or any subsequent renewal) of an authorisation for an activity, or a series of activities, of a kind mentioned in subparagraph 8(1)(a)(i) or (ii), must be for a period not exceeding 6 months.
- (2) The Minister may vary or cancel an authorisation at any time.
- (3) A renewal, variation or cancellation of an authorisation must be in writing.

11 Limits on agencies' functions

- (1) The functions of the agencies are to be performed only in the interests of Australia's national security, Australia's foreign relations or Australia's national economic well-being and only to the extent that those matters are affected by the capabilities, intentions or activities of people or organisations outside Australia.
- (2) The agencies' functions do not include:
 - (a) the carrying out of police functions; or
 - (b) any other responsibility for the enforcement of the law.However, this does not prevent the agencies from:
 - (c) obtaining intelligence under paragraph 6(1)(a) or 7(a) and communicating any such intelligence that is relevant to serious crime to the appropriate law enforcement authorities; or
 - (d) in the case of DSD—performing the function set out in paragraph 7(d).

Note: For *police functions* and *serious crime* see section 3.

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- (2A) The agencies' functions do not include undertaking any activity for the purpose of furthering the interests of an Australian political party or other Australian political organisation.
- (3) Subsection (1) does not apply to the functions described in paragraphs 7(c) and (d).

12 Limits on agencies' activities

An agency must not undertake any activity unless the activity is:

- (a) necessary for the proper performance of its functions; or
- (b) authorised or required by or under another Act.

12A Special responsibilities of Director and Director-General

Both the Director and the Director-General must take all reasonable steps to ensure that:

- (a) his or her agency is kept free from any influences or considerations not relevant to the undertaking of activities as mentioned in paragraph 12(a) or (b); and
- (b) nothing is done that might lend colour to any suggestion that his or her agency is concerned to further or protect the interests of any particular section of the community, or with undertaking any activities other than those mentioned in paragraph 12(a) or (b).

13 Co-operation with other authorities

- (1) Subject to any arrangements made or directions given by the responsible Minister, an agency may cooperate with:
 - (a) Commonwealth authorities; and
 - (b) State authorities; and
 - (c) authorities of other countries approved by the Minister as being capable of assisting the agency in the performance of its functions;so far as is necessary for the agency to perform its functions, or so far as facilitates the performance by the agency of its functions.

Note: For *Commonwealth authority* and *State authority* see section 3.

- (2) An approval under paragraph (1)(c) must be in writing.
- (3) Each agency head must ensure that a copy of any approval given by the relevant responsible Minister is kept by the agency and is available on request by the Inspector-General of Intelligence and Security.

14 Liability for certain acts

- (1) A staff member or agent of an agency is not subject to any civil or criminal liability for any act done outside Australia if the act is done in the proper performance of a function of the agency.
- (2) A person is not subject to any civil or criminal liability for any act done inside Australia if:
 - (a) the act is preparatory to, in support of, or otherwise directly connected with, overseas activities of the agency concerned; and
 - (b) the act:
 - (i) taken together with an act, event, circumstance or result that took place, or was intended to take place, outside Australia, could amount to an offence; but
 - (ii) in the absence of that other act, event, circumstance or result, would not amount to an offence; and
 - (c) the act is done in the proper performance of a function of the agency.
- (2A) Subsection (2) is not intended to permit any act in relation to premises, persons, computers, things, or telecommunications services in Australia, being:
 - (a) an act that ASIO could not do without a Minister authorising it by warrant issued under Division 2 of Part III of the *Australian Security Intelligence Organisation Act 1979* or under Part III of the *Telecommunications (Interception) Act 1979*; or
 - (b) an act to obtain information that ASIO could not obtain other than in accordance with section 283 of the *Telecommunications Act 1997*.

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- (2B) The Inspector-General of Intelligence and Security may give a certificate in writing certifying any fact relevant to the question of whether an act was done in the proper performance of a function of an agency.
- (2C) In any proceedings, a certificate given under subsection (2B) is prima facie evidence of the facts certified.
- (3) In this section:
- act* includes omission.
- staff member* includes the Director and the Director-General.

15 Rules to protect privacy of Australians

- (1) The responsible Minister in relation to ASIS, and the responsible Minister in relation to DSD, must make written rules regulating the communication and retention by the relevant agency of intelligence information concerning Australian persons.
- (2) In making the rules, the Minister must have regard to the need to ensure that the privacy of Australian persons is preserved as far as is consistent with the proper performance by the agencies of their functions.
- Note: For *Australian person* see section 3.
- (3) Before making the rules, the Minister must consult with:
- (a) in the case of ASIS—the Director-General; and
 - (b) in the case of DSD—the Director; and
 - (c) in either case—the Inspector-General of Intelligence and Security and the Attorney-General.
- (4) For the purpose of consultations under paragraph (3)(c), the Minister must provide a copy of the rules the Minister is proposing to make to the Inspector-General of Intelligence and Security and to the Attorney-General.
- (5) The agencies must not communicate intelligence information concerning Australian persons, except in accordance with the rules.

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Note: For *intelligence information* see section 3.

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

Note: For *Committee* see section 3.

Part 3—Establishment of ASIS and role of Director-General

Division 1—Establishment and control of ASIS

16 Establishment of ASIS on a statutory basis

The organisation known as the Australian Secret Intelligence Service is continued in existence in accordance with this Act.

17 Appointment of Director-General

- (1) There is to be a Director-General of ASIS.
- (2) The Director-General is to be appointed by the Governor-General.
- (3) Before a recommendation is made to the Governor-General for the appointment of a person as Director-General, the Prime Minister must consult with the Leader of the Opposition in the House of Representatives.
- (4) The person who, immediately before the commencement of this Act, held office as the Director-General of ASIS continues, subject to this Act, to hold the office for the remainder of the term for which he or she was appointed.

18 Control of ASIS

- (1) ASIS is under the control of the Director-General.
- (2) The Director-General, under the Minister, is responsible for managing ASIS and must advise the Minister in matters relating to ASIS.

19 Briefing the Leader of the Opposition about ASIS

The Director-General must consult regularly with the Leader of the Opposition in the House of Representatives for the purpose of keeping him or her informed on matters relating to ASIS.

Division 2—Administrative provisions relating to the Director-General

20 Period of appointment

- (1) The Director-General holds office for the period specified in the instrument of appointment, but is eligible for re-appointment.
- (2) The period must not be longer than 5 years.

21 Remuneration etc.

- (1) The remuneration and other conditions of appointment of the Director-General are as determined in writing by the responsible Minister.
- (2) For each determination, the responsible Minister must seek the advice of the Remuneration Tribunal and take that advice into account.
- (3) Each determination must be published in the *Gazette* within 14 days after the determination is made.

22 Resignation

The Director-General may resign by giving a signed notice of resignation to the Governor-General.

23 Termination of appointment

- (1) The Governor-General may terminate the appointment of the Director-General for misbehaviour or physical or mental incapacity.
- (2) The Governor-General must terminate the appointment of the Director-General if:
 - (a) the Director-General:
 - (i) becomes bankrupt; or

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- (ii) applies to take the benefit of any law for the relief of bankrupt or insolvent debtors; or
 - (iii) compounds with his or her creditors; or
 - (iv) makes an assignment of his or her remuneration for the benefit of his or her creditors; or
 - (b) the Director-General is absent, except on leave of absence, for 14 consecutive days or for 28 days in any 12 months; or
 - (c) the Director-General engages, except with the Minister's approval, in paid employment outside the duties of his or her office; or
 - (d) the Director-General fails, without reasonable excuse, to comply with section 26 (disclosure of interests).
- (3) The Governor-General may, with the Director-General's consent, retire the Director-General from office on the ground of incapacity if the Director-General is:
- (a) an eligible employee for the purposes of the *Superannuation Act 1976*; or
 - (b) a member of the superannuation scheme established by deed under the *Superannuation Act 1990*.

24 Acting Director-General

- (1) The Minister may appoint a person to act as the Director-General if there is a vacancy in the office of the Director-General.
- (2) The Minister may appoint a person to act as the Director-General during any period, or during all periods, when the Director-General is absent from duty or from Australia or is, for any reason, unable to perform the duties of the office.
- (3) Anything done by or in relation to a person purporting to act under this section is not invalid merely because:
 - (a) the occasion of the appointment had not arisen; or
 - (b) there was a defect or irregularity in connection with the appointment; or
 - (c) the appointment had ceased to have effect; or
 - (d) the occasion to act had not arisen or had ceased.

Note: See section 33A of the *Acts Interpretation Act 1901* on acting appointments.

25 Outside employment

The Director-General must not engage in paid employment that, in the Minister's opinion, conflicts or may conflict with the proper performance of the Director-General's duties.

26 Disclosure of interests by Director-General

The Director-General must give written notice to the Minister of all interests, pecuniary or otherwise, that the Director-General has or acquires and that could conflict with the proper performance of the Director-General's functions.

27 Delegation

- (1) The Director-General may delegate to a staff member (other than a consultant) all or any of the powers of the Director-General that relate to the management of the staff of ASIS or the financial management of ASIS.

Note: See sections 34AA, 34AB and 34A of the *Acts Interpretation Act 1901* on delegations.

- (2) The delegation must be in writing.

Part 4—Committee on ASIO, ASIS and DSD

28 Committee on ASIO, ASIS and DSD

- (1) A Committee to be known as the Parliamentary Joint Committee on ASIO, ASIS and DSD is to be established as soon as practicable after the commencement of this Act and after the commencement of the first session of each Parliament.
- (2) The Committee is to consist of 7 members, 3 of whom must be Senators and 4 of whom must be members of the House of Representatives.
- (3) A majority of the Committee's members must be Government members.

Note: For more detailed provisions on the appointment of members see Part 3 of Schedule 1.

29 Functions of the Committee

- (1) The functions of the Committee are:
 - (a) to review the administration and expenditure of ASIO, ASIS and DSD, including the annual financial statements ASIO, ASIS and DSD; and
 - (b) to review any matter in relation to ASIO, ASIS or DSD referred to the Committee by:
 - (i) the responsible Minister; or
 - (ii) a resolution of either House of the Parliament; and
 - (c) to report the Committee's comments and recommendations to each House of the Parliament and to the responsible Minister.
- (2) The Committee may, by resolution, request the responsible Minister to refer a matter in relation to the activities of ASIO, ASIS or DSD (as the case may be) to the Committee, and the Minister may, under paragraph (1)(b), refer that matter to the Committee for review.

- (3) The functions of the Committee do not include:
- (a) reviewing the intelligence gathering priorities of ASIO, ASIS or DSD; or
 - (b) reviewing the sources of information, other operational assistance or operational methods available to ASIO, ASIS or DSD; or
 - (c) reviewing particular operations that have been, are being or are proposed to be undertaken by ASIO, ASIS or DSD; or
 - (d) reviewing information provided by, or by an agency of, a foreign government where that government does not consent to the disclosure of the information; or
 - (e) reviewing an aspect of the activities of ASIO, ASIS or DSD that does not affect an Australian person; or
 - (f) reviewing the rules made under section 15 of this Act; or
 - (g) conducting inquiries into individual complaints about the activities of ASIO, ASIS or DSD.

Note: For *Australian person* see section 3.

30 Agency heads and Inspector-General of Intelligence and Security to brief the Committee

For the purpose of performing its functions, the Committee may request the following people to brief the Committee:

- (a) the Director-General of Security;
- (b) the Director-General of ASIS;
- (ba) the Director of DSD;
- (c) the Inspector-General of Intelligence and Security.

Note: The Committee cannot require anyone briefing the Committee to disclose operationally sensitive information (see clause 1 of Schedule 1).

31 Annual report

As soon as practicable after each year ending on 30 June, the Committee must give to the Parliament a report on the activities of the Committee during the year.

Part 4 Committee on ASIO, ASIS and DSD

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32 Schedule 1

Schedule 1 contains further provisions about the Committee.

Part 5—Staff of ASIS

33 Employment of staff

- (1) The Director-General may, on behalf of the Commonwealth, employ by written agreement such employees of ASIS as the Director-General thinks necessary for the purposes of this Act.
- (2) The Director-General, on behalf of the Commonwealth, has all the rights, duties and powers of an employer in respect of the engagement, and employment, of employees of ASIS.
- (3) The Director-General may determine the terms and conditions on which employees are to be employed. Before making a determination the Director-General must consult with the employees who are to be subject to the terms and conditions of the determination.

34 Engagement of consultants

- (1) The Director-General may, on behalf of the Commonwealth, engage as consultants persons having suitable qualifications and experience.
- (2) The engagement of a consultant must be by written agreement.
- (3) The terms and conditions of engagement are those determined by the Director-General from time to time.

35 Applicability of principles of *Public Service Act 1999*

Although employees of ASIS are not employed under the *Public Service Act 1999*, the Director-General must adopt the principles of that Act in relation to employees of ASIS to the extent to which the Director-General considers they are consistent with the effective performance of the functions of ASIS.

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36 Special provisions relating to existing staff

A person who, immediately before the commencement of this Act, was employed in ASIS under a written agreement continues to be employed on the terms and conditions specified in that agreement, unless he or she agrees to accept other terms and conditions.

37 Staff grievances

- (1) The Director-General must:
 - (a) establish procedures relating to the consideration of grievances of employees and former employees of ASIS; and
 - (b) determine the classes of ASIS actions that are to be subject to the grievance procedures.
- (2) In establishing the procedures and determining the classes of action, the Director-General must:
 - (a) adopt the principles of the *Public Service Act 1999* to the extent to which the Director-General considers they are consistent with the effective performance of the functions of ASIS; and
 - (b) consult with the employees of ASIS.
- (3) The procedures must include the following matters:
 - (a) initial consideration of grievances by the Director-General or a person authorised in writing by the Director-General;
 - (b) establishment of Grievance Review Panels chaired by independent Chairs to make determinations reviewing initial considerations of grievances.
- (4) The Director-General must implement a determination of a Grievance Review Panel to the extent that it is within his or her power to do so.
- (5) In this section:

action includes a refusal or failure to act.

ASIS action means action taken after the commencement of this Act by the Director-General or an employee of ASIS that relates to an ASIS employee's employment.

38 Application of Crimes Act

The Director-General and staff members of ASIS are Commonwealth officers for the purposes of the *Crimes Act 1914*.

Part 6—Miscellaneous

39 Communication of certain information—ASIS

- (1) A person is guilty of an offence if:
- (a) the person communicates any information or matter that was prepared by or on behalf of ASIS in connection with its functions or relates to the performance by ASIS of its functions; and
 - (b) the information or matter has come to the knowledge or into the possession of the person by reason of:
 - (i) his or her being, or having been, a staff member or agent of ASIS; or
 - (ii) his or her having entered into any contract, agreement or arrangement with ASIS; or
 - (iii) his or her having been an employee or agent of a person who has entered into a contract, agreement or arrangement with ASIS; and
 - (c) the communication was not made:
 - (i) to the Director-General or a staff member by the person in the course of the person's duties as a staff member; or
 - (ii) to the Director-General or a staff member by the person in accordance with a contract, agreement or arrangement; or
 - (iii) by the person in the course of the person's duties as a staff member or agent, within the limits of authority conferred on the person by the Director-General; or
 - (iv) with the approval of the Director-General or of a staff member having the authority of the Director-General to give such an approval.

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

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

40 Communication of certain information—DSD

- (1) A person is guilty of an offence if:
- (a) the person communicates any information or matter that was prepared by or on behalf of DSD in connection with its functions or relates to the performance by DSD of its functions; and
 - (b) the information or matter has come to the knowledge or into the possession of the person by reason of:
 - (i) his or her being, or having been, a staff member of DSD; or
 - (ii) his or her having entered into any contract, agreement or arrangement with DSD; or
 - (iii) his or her having been an employee or agent of a person who has entered into a contract, agreement or arrangement with DSD; and
 - (c) the communication was not made:
 - (i) to the Director or a staff member by the person in the course of the person's duties as a staff member; or
 - (ii) to the Director or a staff member by the person in accordance with a contract, agreement or arrangement; or
 - (iii) by the person in the course of the person's duties as a staff member, within the limits of authority conferred on the person by the Director; or
 - (iv) with the approval of the Director or of a staff member having the authority of the Director to give such an approval.

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

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

41 Publication of identity of staff

- (1) A person is guilty of an offence:
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Section 42

- (a) if:
 - (i) the person identifies a person as being, or having been, an agent or staff member of ASIS; and
 - (ii) the identification is not of the Director-General or such other persons as the Director-General determines; or
- (b) if:
 - (i) the person makes public any information from which the identity of such a person could reasonably be inferred, or any information that could reasonably lead to the identity of such a person being established; and
 - (ii) the Minister or Director-General has not consented in writing to the information being made public; and
 - (iii) the information has not been made public by means of broadcasting or reporting proceedings of the Parliament (other than proceedings of the Committee) as authorised by the Parliament.

Penalty: Imprisonment for 1 year or 60 penalty units, or both.

Note: For *staff member* see section 3.

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

42 Annual report

As soon as practicable after each year ending on 30 June, the Director-General must give to the Minister a report on the activities of ASIS during the year.

43 Regulations

The Governor-General may make regulations prescribing matters:

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

Schedule 1—Committee on ASIO, ASIS and DSD

Note: See section 32.

Part 1A—Definitions

1A Definitions

In this Schedule, unless the contrary intention appears:

agency means ASIO, ASIS or DSD.

agency head means:

- (a) the Director-General of Security; or
- (b) the Director-General of ASIS; or
- (c) the Director of DSD.

operationally sensitive information means information:

- (a) about sources of information, other operational assistance or operational methods available to ASIO, ASIS or DSD; or
- (b) about particular operations that have been, are being or are proposed to be undertaken by ASIO, ASIS or DSD; or
- (c) provided by, or by an agency of, a foreign government where that government does not consent to the public disclosure of the information.

responsible Minister, in relation to the review of a matter, means the Minister responsible for the agency concerned in relation to that matter.

Part 1—Procedure

1 Committee must not require certain information to be disclosed

The Committee must not require a person or body to disclose to the Committee operationally sensitive information or information that would or might prejudice Australia's national security or the conduct of Australia's foreign relations.

2 Power to obtain information and documents

- (1) The Chair or another member authorised by the Committee may give a person written notice requiring the person to appear before the Committee to give evidence or to produce documents to the Committee.
- (2) The notice must specify the day on which, and the time and place at which, the person is required to appear or to produce documents. The day must not be less than 5 days after the day on which the notice is given to the person.
- (3) The notice must also specify the nature of the evidence or documents to be provided to the Committee, and in the case of documents, the form in which they are to be provided.
- (4) A requirement under this clause must not be made of:
 - (a) an agency head; or
 - (b) a staff member or agent of an agency; or
 - (c) the Inspector-General of Intelligence and Security; or
 - (d) a member of the staff of the Inspector-General of Intelligence and Security.
- (5) A requirement under this clause may only be made of a person if the Committee has reasonable grounds for believing that the person is capable of giving evidence or producing documents relevant to a matter that the Committee is reviewing or that has been referred to the Committee.

- (7) The Commonwealth must pay a person who has been given a notice requiring the person to appear before the Committee such allowances for the person's travelling and other expenses as are prescribed.

3 Provision of information to Committee by ASIO, ASIS and DSD

- (1) The Chair or another member authorised by the Committee may give a written notice to an agency head requiring him or her to appear before the Committee to give evidence or to produce documents to the Committee.
- (2) The notice must specify the day on which, and the time and place at which, the agency head is required to appear or to produce documents. The day must not be less than 5 days after the day on which the notice is given to the agency head.
- (3) The notice must also specify the nature of the evidence or documents to be provided to the Committee, and in the case of documents, the form in which they are to be provided.
- (4) A requirement under this clause may only be made of the agency head if the Committee has reasonable grounds for believing that the agency head is capable of giving evidence or producing documents relevant to a matter that has been referred to the Committee.
- (5) The evidence is to be given by:
- (a) if the agency head nominates a staff member to give the evidence—the staff member or both the staff member and the agency head; or
 - (b) in any other case—the agency head.

4 Certificates by Minister

- (1) If:
- (a) a person is about to give or is giving evidence to the Committee or is about to produce a document to the Committee (whether or not required to do so under clause 2 or 3); and
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Clause 4

- (b) a Minister responsible for an agency is of the opinion that, to prevent the disclosure of operationally sensitive information:
 - (i) the person (not being an agency head) should not give evidence before the Committee; or
 - (ii) the person should not give evidence before the Committee relating to a particular matter; or
 - (iii) in a case where a person has commenced to give evidence before the Committee:
 - (A) the person should not continue to give evidence before the Committee; or
 - (B) the person should not give, or continue to give, evidence relating to a particular matter before the Committee; or
 - (iv) the person should not produce documents to the Committee; or
 - (v) the person should not produce documents of a particular kind to the Committee;
- the Minister may give to the presiding member of the Committee a certificate in relation to the matter stating the Minister's opinion.
- (2) The Minister's certificate must also specify:
 - (a) in a case to which subparagraph (1)(b)(ii) or (v) applies—the matter in relation to which the Minister is satisfied that the person should not give, or continue to give, evidence, or specifying the kind of documents that the Minister is satisfied the person should not produce, as the case requires; and
 - (b) in a case to which sub-subparagraph (1)(b)(iii)(B) applies—the matter in relation to which the Minister is satisfied that the person should not give, or continue to give, evidence.
 - (3) The Minister must give a copy of a certificate under subclause (1) to the President of the Senate, to the Speaker of the House of Representatives and to the person required to give evidence or produce documents.
 - (4) A decision of the Minister under subclause (1) must not be questioned in any court or tribunal.
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- (5) Where the Minister gives a certificate under subclause (1) in relation to a person:
- (a) if the certificate states that the person should not give, or continue to give, evidence before the Committee—the Committee must not receive, or continue to receive, as the case may be, evidence from the person; or
 - (b) if the certificate states that the person should not give, or continue to give, evidence before the Committee relating to a particular matter—the Committee must not receive, or continue to receive, as the case may be, evidence from the person relating to that matter; or
 - (c) if the certificate states that the person should not produce documents, or documents of a particular kind, to the Committee—the Committee must not receive documents, or documents of that kind, as the case may be, from the person.

5 Evidence

- (1) The Committee may take evidence on oath or affirmation.
- (2) The member presiding may administer an oath or affirmation to a witness appearing before the Committee.
- (3) The oath or affirmation is an oath or affirmation that the evidence the person will give will be true.
- (4) To avoid doubt, the Committee is not to be taken to be an Australian court for the purposes of the *Evidence Act 1995*.

6 Publication of evidence or contents of documents

- (1) Subject to this clause, the Committee may disclose or publish, or authorise the disclosure or publication of:
 - (a) any evidence taken by the Committee; or
 - (b) the contents of any document produced to the Committee.
- (2) If the evidence is taken, or the document is produced, in a review conducted in private, the Committee must not disclose or publish, or authorise the disclosure or publication of the evidence or the contents of the document without the written authority of:

Clause 7

- (a) if the person who gave the evidence or produced the document is a staff member of an agency—the agency head; or
 - (b) in any other case—the person who gave the evidence or produced the document.
- (3) Subclause (2) does not apply:
- (a) if the evidence, or the contents of the document, have already been lawfully disclosed or published; or
 - (b) in relation to a matter of which the Committee has become aware otherwise than because of the giving of any evidence before, or the production of any document to, the Committee.
- (4) The Committee must not disclose or publish, or authorise the disclosure or publication of, the evidence, or the contents of the document, if the disclosure or publication would disclose a matter that the Committee is not, under clause 7, permitted to disclose in a report to a House of the Parliament.
- (5) The Committee may obtain the advice of the responsible Minister or responsible Ministers concerned as to whether the disclosure or publication might disclose a matter of that kind.
- (6) This clause has effect despite section 2 of the *Parliamentary Papers Act 1908*.
- (7) If the evidence, or the contents of the document, are disclosed or published under this clause, section 4 of the *Parliamentary Papers Act 1908* applies to the disclosure or publication as if it were a publication under an authority given under section 2 of that Act.

7 Restrictions on disclosure to Parliament

- (1) The Committee must not disclose in a report to a House of the Parliament:
- (a) the identity of a person who is or has been a staff member of ASIO or ASIS or an agent of ASIO, ASIS or DSD; or
 - (b) any information from which the identity of such a person could reasonably be inferred; or

- (c) operationally sensitive information or information that would or might prejudice:
 - (i) Australia's national security or the conduct of Australia's foreign relations; or
 - (ii) the performance by an agency of its functions.
- (2) An agency head may determine that paragraphs (1)(a) and (b) do not apply to the identification of specified staff members or agents of his or her agency, and the determination has effect accordingly.
- (3) The Committee must obtain the advice of the responsible Minister or responsible Ministers concerned as to whether the disclosure of any part of the report would or might disclose a matter referred to in subclause (1).
- (4) The Committee must not present a report of the Committee to a House of the Parliament if a responsible Minister concerned has advised that the report or a part of the report would or might disclose such a matter.

8 Continuance of evidence

- (1) If:
 - (a) any evidence or document about a matter has been taken by or produced to the Committee as constituted at a time; and
 - (b) the Committee as so constituted has ceased to exist before reporting on the matter;the Committee as constituted at a later time, whether during the same or another Parliament, may consider the evidence or document as if the evidence or document had been taken by or produced to it.
- (2) Clause 9 applies to each member of the later Committee as if the evidence or document had been taken or produced to that Committee.

Part 2—Offences

9 Offences relating to publishing or disclosing evidence or documents

- (1) A person (including a member) is guilty of an offence if:
- (a) the person discloses or publishes any evidence taken by, or the contents of any document produced to, the Committee in a review conducted in private; and
 - (b) the disclosure or publication is not authorised in writing by:
 - (i) if the person who gave the evidence or produced the document is a staff member of an agency—the agency head; or
 - (ii) in any other case—the person who gave the evidence or produced the document; and
 - (c) the disclosure or publication is of evidence, or is of the contents of a document, that has not already been lawfully disclosed or published.
- (2) Subclause (1) does not apply to the disclosure or publication by a person of a matter of which the person has become aware otherwise than because of the giving of any evidence before, or the production of any document to, the Committee.

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

- (3) Subclause (1) has effect despite section 2 of the *Parliamentary Papers Act 1908*.
- (4) In this clause:

Committee includes the Parliamentary Joint Committee on the Australian Security Intelligence Organisation.

Note: The Parliamentary Joint Committee on the Australian Security Intelligence Organisation (established under the *Australian Security Intelligence Organisation Act 1979*) ceased to exist when the Parliamentary Joint Committee on ASIO, ASIS and DSD was established. However, the records of the earlier Committee were

transferred to the Parliamentary Joint Committee on ASIO, ASIS and DSD.

10 Offences relating to giving evidence or producing documents

- (1) A person who has been given a notice requiring the person to appear before the Committee is guilty of an offence if the person:
- (a) fails to attend as required by the notice; or
 - (b) having not been excused or released by the Committee, fails to attend and report from day to day; or
 - (c) refuses or fails to be sworn or to make an affirmation; or
 - (d) refuses or fails to answer a question, not being a question about a matter in respect of which a certificate has been issued under clause 4, that the Committee requires the person to answer.

Penalty: Imprisonment for 6 months or 30 penalty units, or both.

- (2) Subclause (1) applies to a staff member who is nominated by an agency head under subclause 3(5) to appear before the Committee to give evidence.
- (3) Paragraph (1)(d) does not apply if the answer to the question would tend to incriminate the person.
- (4) A person who has been given a notice requiring the person to produce a document, not being a document in respect of which a certificate has been issued under clause 4, to the Committee is guilty of an offence if the person refuses or fails to produce the document.

Penalty: Imprisonment for 6 months or 30 penalty units, or both.

- (5) Subclause (4) does not apply if the producing of the document would tend to incriminate the person.
- (6) A person is guilty of an offence if the person:
- (a) gives evidence to the Committee; and
 - (b) does so knowing that the evidence is false or misleading in a material particular.

Clause 11

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

11 Protection of witnesses

- (1) A person who causes or threatens to cause any detriment to another person with the intention that the other person or a third person will:
- (a) not attend as a witness before the Committee; or
 - (b) give false evidence or a falsified document to the Committee;
or
 - (c) withhold true evidence or a document from the Committee;
- is guilty of an offence.

Penalty: Imprisonment for 5 years or 300 penalty units, or both.

- (2) A person who otherwise improperly influences another person with the intention that the other person or a third person will:
- (a) not attend as a witness before the Committee; or
 - (b) give false evidence or a falsified document to the Committee;
or
 - (c) withhold true evidence or a document from the Committee;
- is guilty of an offence.

Penalty: Imprisonment for 5 years or 300 penalty units, or both.

- (3) A person who causes or threatens to cause any detriment to another person because that other person or a third person appeared before the Committee or produced a document to the Committee is guilty of an offence.

Penalty: Imprisonment for 5 years or 300 penalty units, or both.

12 Secrecy

- (1) A person who is or has been a member, or a member of the staff, of the Committee is guilty of an offence if the person, directly or indirectly:

- (a) makes a record of, or discloses or communicates to a person, any information acquired because of holding the office or employment; or
- (b) produces to a person a document provided to the Committee for the purposes of enabling the Committee to perform its functions;

and the action of the person is not carried out for the purposes of enabling the Committee to perform its functions.

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

- (2) A person who is or has been a member, or a member of the staff, of the Committee must not be required to:
 - (a) produce in a court a document of which he or she has custody, or to which he or she has access, because of his or her position as a member, or a member of the staff, of the Committee; or
 - (b) disclose or to communicate to a court any information obtained by him or her because of such a position.

- (3) In this clause:

produce includes permit access to.

13 Prosecution of offences

A prosecution for an offence against this Part can be instituted only by the Attorney-General or with the Attorney-General's consent.

Part 3—Administration

14 Appointment of members

- (1) The members who are members of the House of Representatives must be appointed by resolution of the House on the nomination of the Prime Minister.
- (2) Before nominating the members, the Prime Minister must consult with the Leader of each recognised political party that is represented in the House and does not form part of the Government.
- (3) The members who are Senators must be appointed by resolution of the Senate on the nomination of the Leader of the Government in the Senate.
- (4) Before nominating the members, the Leader of the Government in the Senate must consult with the Leader of each recognised political party that is represented in the Senate and does not form part of the Government.
- (5) In nominating the members, the Prime Minister and the Leader of the Government in the Senate must have regard to the desirability of ensuring that the composition of the Committee reflects the representation of recognised political parties in the Parliament.
- (6) A person is not eligible for appointment as a member if the person is:
 - (a) a Minister; or
 - (b) the President of the Senate; or
 - (c) the Speaker of the House of Representatives.

15 Term of office

- (1) A member holds office during the pleasure of the House of the Parliament by which the member was appointed.

- (2) A member ceases to hold office as a member:
 - (a) when the House of Representatives expires by the passing of time or is dissolved; or
 - (b) if the person becomes the holder of an office specified in any of the paragraphs of subclause 14(6); or
 - (c) if the person ceases to be a member of the House of the Parliament by which the person was appointed; or
 - (d) if the person resigns the office.
- (3) A member who is a Senator may resign his or her office by giving a signed notice of resignation to the President of the Senate.
- (4) A member who is a member of the House of Representatives may resign his or her office by giving a signed notice of resignation to the Speaker of the House of Representatives.
- (5) Either House of the Parliament may appoint one of its members to fill a vacancy among the members of the Committee appointed by that House.

16 Chair

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

17 Meetings

- (1) The Committee may meet at such times and, subject to subclause (3), at such places in Australia as the Committee decides by resolution or, subject to a resolution of the Committee, as the Chair decides.

Clause 18

- (2) The Committee may meet and transact business even though the Parliament has been prorogued.
- (3) Before the Committee or the Chair decides a place of meeting, the Chair must obtain advice from each of the agency heads as to the suitability of the place.
- (4) The Chair must preside at all meetings of the Committee at which he or she is present.
- (5) If the Chair is not present at a meeting of the Committee, the members present are to appoint a member to preside, and the member so appointed may exercise, in relation to the meeting and any matter arising out of the meeting, any of the powers of the Chair.
- (6) The Committee must keep minutes of its proceedings.

18 Quorum

- (1) At a meeting of the Committee, a quorum is constituted if:
 - (a) at least 4 members are present; and
 - (b) subject to subclause (2), a majority of the members present are Government members.
- (2) There may be an equal number of Government members and non-Government members if the presiding member is a Government member.

19 Voting at meetings

- (1) A question arising at a meeting is to be decided by a majority of the votes of the members present and voting.
- (2) The member presiding at the meeting has a deliberative vote.
- (3) The member presiding at the meeting has a casting vote if votes are equal.

20 Proceedings

- (1) The proceedings of the Committee are to be conducted in the manner determined by the Committee.
- (2) The Committee must not, without the approval of the Minister responsible for ASIO, the Minister responsible for ASIS and the Minister responsible for DSD, conduct a review in public.
- (3) At a review conducted in private, the Committee may give directions as to the persons who may be present. In giving such directions, the Committee must have regard to the requirements of security and any other matters the Committee thinks fit.

21 Staff of the Committee must be cleared for security purposes

Each member of the staff of the Committee must be cleared for security purposes to the same level and at the same frequency as staff members of ASIS.

22 Protection of information and documents

- (1) The Committee must make arrangements acceptable to all of the agency heads for the security of any information held and any records made by the Committee.
- (2) The Committee must ensure that any documents having a national security classification provided to the Committee are returned as soon as possible after the members have examined them.

*[Minister's second reading speech made in—
House of Representatives on 27 June 2001
Senate on 24 September 2001]*

(126/01)
