



The Hon Christian Porter MP
Attorney-General

17/15685

25 JUN 2018

The Hon Peter Dutton MP
Minister for Home Affairs
Parliament House
CANBERRA ACT 2600

Dear Minister

I am writing to seek your agreement to parliamentary amendments to the National Security Legislation Amendment (Espionage and Foreign Interference) Bill 2017 (the Bill).

On 7 June 2018 the Parliamentary Joint Committee on Intelligence and Security (the Committee) tabled its advisory report on the Bill and recommended that, following implementation of the recommendations in its report, the Bill be passed. I propose that the Government accept all of the recommendations made by the Committee and move a number of amendments to the Bill to implement them.

A table of the Committee's recommendations and a proposed Government response is at **Attachment A**. A copy of the proposed amendments is at **Attachment B**.

The proposed amendments to the Bill will:

- narrow the scope of the secrecy and espionage offences
- strengthen the defence for journalists and provide additional defences to implement the Committee's recommendations about whistle-blowers and other legitimate conduct
- reduce the maximum penalties for secrecy offences
- apply a consent to prosecute provision to secrecy offences
- require certification of security classified information prior to the commencement of proceedings
- clarify key terms including prejudice to Australia's national security and foreign political organisation
- require a review of the operation and effectiveness of the new offences created by the Bill after three years of the offences commencing operation, and
- make minor technical amendments.

Detailed information about the proposed amendments is set out at **Attachment C**.

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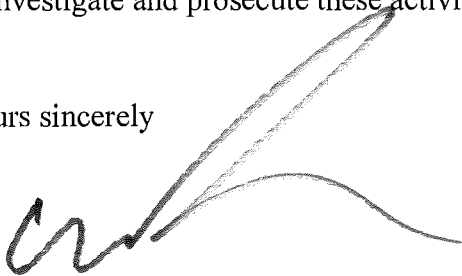
The Committee has also recommended that the citizenship revocation scheme at section 35A of the *Australian Citizenship Act 2007* be amended to include foreign interference offences in the scope of the scheme (Recommendation 53). I propose that this recommendation be accepted. As minister responsible for the *Australian Citizenship Act 2007*, I seek your agreement to this amendment (set out at Items 71 and 72 of the amendments at Attachment B).

Following the machinery of government changes to establish the Home Affairs portfolio, you have policy responsibility for many of the offences in the Bill. I therefore seek your agreement to all of the proposed Government response and approval of the amendments (other than relating to Schedules 2, 5 and 6 of the Bill, for which I have policy responsibility).

To ensure that the amendments are able to be introduced and debated in the sitting week of 25 June 2018, I would be grateful to receive your response by Monday 25 June 2018.

I thank you for your support in improving Australia's espionage and foreign interference laws and providing our law enforcement and security agencies with a comprehensive suite of tools to investigate and prosecute these activities and to provide transparency for decision-makers.

Yours sincerely



The Hon Christian Porter MP
Attorney-General

Encl:

Attachment A - Table of Committee recommendations and Government response

Attachment B – Parliamentary amendments to the National Security Legislation (Espionage and Foreign Interference) Bill 2017

Attachment C - Overview of parliamentary amendments to the National Security Legislation (Espionage and Foreign Interference) Bill 2017

Government response:
Parliamentary Joint Committee on Intelligence and Security
Advisory Report on the
National Security Legislation Amendment (Espionage and Foreign
Interference) Bill 2017

(Report tabled 7 June 2018)

| Recommendation | Response |
|--|---|
| <p>1. Passage of the Bill</p> <p>The Committee recommends that, following implementation of the recommendations in this report, the National Security Legislation Amendment (Espionage and Foreign Interference) Bill 2017 be passed.</p> | <p>Accepted.</p> |
| Definitions | |
| <p>2. Prejudice to national security</p> <p>The Committee recommends that the Bill be amended to clarify that, for the purpose of the Bill's espionage, foreign interference and sabotage offences, the expression 'prejudice to national security' cannot consist of embarrassment alone, and must also include a degree of damage or harm.</p> | <p>Accepted.</p> |
| <p>3. Advantaging the national security of a foreign country</p> <p>The Committee recommends that the Bill be amended to reflect the intent of the Explanatory Memorandum that the term 'advantaging the national security of a foreign country', does not apply to conduct that is mutually advantageous to the security of both Australia and a foreign country.</p> | <p>Accepted.</p> <p>The definition will require the conduct to advantage Australia's national security to an equivalent extent.</p> |
| <p>4. Meaning of 'Espionage', 'sabotage', 'political violence' and 'foreign interference'</p> <p>The Committee recommends that the Explanatory Memorandum be amended to provide greater clarity about the intended meaning of the terms, 'espionage', 'sabotage', 'political violence' and 'foreign interference' for the purposes of the definition of national security at proposed section 90.4.</p> | <p>Accepted.</p> |
| <p>5. ASIO Act</p> <p>The Committee recommends that the Bill be amended to clarify that the Bill does not affect the operation of existing provision in the ASIO Act, unless explicitly stated.</p> | <p>Accepted.</p> |

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| Recommendation | Response |
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| <p>6. Foreign political organisation</p> <p>The Committee recommends that the Bill be amended to define what foreign political organisation may be covered by the term 'foreign political organisation'.</p> | Accepted. |
| <p>7. Australian Government security clearance</p> <p>The Committee recommends that the Bill be amended to define the meaning of 'Australian Government security clearance'.</p> | Accepted. |
| Security Classifications | |
| <p>8. Security classification – definition and regulations</p> <p>The Committee recommends that the Bill be amended to define each 'security classification' to which criminal liability attaches. Each definition should include harm-based statutory criteria to determine proper classification to apply to that information. Any material incorporated by reference into the regulations should be required to be publically available.</p> | Accepted. |
| <p>9. Security classification and strict liability</p> <p>The Committee recommends implementation of the Attorney-General's proposed amendments to</p> <ul style="list-style-type: none"> • narrow the proposed definition of 'security classification' to a classification of SECRET or TOP SECRET • remove strict liability from espionage and secrecy offences | <p>Accepted.</p> <p>Strict liability will not apply to the definition of 'security classification' to the extent that the definition relates to the information carrying a classification of SECRET or TOP SECRET. The prosecution will need to prove that the defendant was reckless as to this. Strict liability will apply to other aspects of the definition, which are technical matters and not relevant to the defendant's culpability.</p> |
| Evidentiary certificates | |
| <p>10. Certification of security classification</p> <p>The Committee recommends that the Bill be amended to require that, prior to initiating proceedings for an espionage or secrecy offence that relies on the fact that information is security classified, the head of the originating agency must certify that it is appropriate that the information had a security classification at the time of the conduct that is alleged to constitute the offence. This certificate should operate as a condition precedent to the initiation of proceedings. The certificate should not have any evidentiary effect.</p> | <p>Accepted.</p> <p>The Attorney-General will be responsible for providing this certification as part of the consent to prosecute process. The Attorney-General will receive advice from relevant agencies, including the originating agency, to inform this decision.</p> |

| Recommendation | Response |
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| <p>11. Evidentiary certificate regimes – security classified information</p> <p>The Committee recommends that the Bill be amended to remove the evidentiary certificate regimes in proposed section 93.3 (1)(a)-(b) and 121.3, in relation to security classified information.</p> | Accepted. |
| <p>12. Evidentiary certificate regimes –concerns national security</p> <p>The Committee recommends that the Bill be amended to remove the evidentiary certificate regimes in proposed section 93.3 (1)(c)-(d) in relation to information that ‘concerns Australia’s national security’.</p> | Accepted. |
| Preparatory offences | |
| <p>13. Guide to Framing Commonwealth Offences</p> <p>The Committee recommends that the Government amend the <i>Guide to Framing Commonwealth Offences, Infringement Notices and Enforcement Powers</i> to identify criteria to be used for determining the kinds of criminal conduct that warrant preparatory offences.</p> | Accepted. |
| Secrecy | |
| <p>14. Secrecy offences – intention and recklessness</p> <p>The Committee recommends that the Bill include a note making explicit that the secrecy offences relating to security classified information and other ‘inherently harmful information’ will only apply where a person intentionally deals with the relevant information, and where the person reckless as to the nature of that information.</p> | Accepted. |
| <p>15. Scope of section 122.1</p> <p>The Committee recommends that the Attorney-General’s proposed amendments to narrow the scope of the offences at proposed section 122.1 in relation to ‘inherently harmful information’ be implemented. This includes removing paragraph (d) from the definition of ‘inherently harmful information’, removing strict liability from elements of the offences, and limiting the offence to Commonwealth officers.</p> | <p>Accepted.</p> <p>Strict liability will not apply to the definition of ‘security classification’ to the extent that the definition relates to the information carrying a classification of SECRET or TOP SECRET. The prosecution will need to prove that the defendant was reckless as to this. Strict liability will apply to other aspects of the definition, which are technical matters and not relevant to the defendant’s culpability.</p> |

| Recommendation | Response |
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| <p>16. Inherently harmful information</p> <p>The Committee recommends that the Bill be amended to move paragraph (b) – information the communication of which would, or could be reasonable expected to, damage the security or defence of Australia – from the definition of ‘inherently harmful information’ into the definition of cause harm to Australia’s interest’ in proposed section 121.1.</p> | Accepted. |
| <p>17. Scope of section 122.2</p> <p>The Committee recommends that the Attorney-General’s proposed amendments to narrow the scope of the offences at proposed section 122.2 in relation to conduct causing harm to Australia’s interests be implemented. This includes removing paragraphs (a)(i), (d) and (e) from the definition of ‘cause harm to Australia’s interest’, clarifying that paragraph (f) applies to the health or safety of the <i>Australian</i> public, or a section of the <i>Australian</i> public, and limiting the offences to Commonwealth officers.</p> | Accepted. |
| <p>18. Regulations prescribing ‘proper place of custody’</p> <p>The Committee recommends that the Bill be amended to require that any material incorporated into regulations for the purpose of the definition of ‘proper place of custody’ at proposed section 121.2 be publically available.</p> | Accepted. |
| <p>19. Scope of section 122.1(4)</p> <p>The Committee recommends that the Bill be amended to limit the secrecy offence at proposed section 122.1(4), in relation to failing to comply with a lawful direction, to directions that have been issued for the purpose of protecting the security of the ‘inherently harmful information’ against unauthorised access or disclosure.</p> | <p>Accepted.</p> <p>The scope of section 122.1(4) has been narrowed to apply where the failure to comply with a direction <i>results in a risk to security</i>.</p> |
| <p>20. Aggravating factor – holds security clearance</p> <p>The Committee recommends that the Bill be amended to limit the aggravating factor at subparagraph 122.3(1)(b)(v), in relation to the proposed secrecy offences for Commonwealth officers, to persons holding an Australian Government security clearance that allows the person to access information with a classification of SECRET or above.</p> | Accepted. |

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| Recommendation | Response |
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| <p>21. Secrecy offence for non-Commonwealth officers</p> <p>The Committee recommends that the Attorney-General's proposed amendments, to create separate secrecy offences that apply to non-Commonwealth officers that are narrower in scope than those applying to Commonwealth officers, be implemented.</p> | <p>Accepted.</p> |
| <p>22. Section 122.5 defence and FOI Act</p> <p>The Committee recommends that the Bill be amended to make clear the effect of the defence in subsection 122.5(1) and (2) in relation to the <i>Freedom of Information Act 1982</i>.</p> | <p>Accepted.</p> <p>A new defence specifically covering the <i>Freedom of Information Act 1982</i> has been created at subsection 122.5(4) rather than amending subsections 122.5(1) and (2).</p> |
| <p>23. Sunset period on section 122.4</p> <p>The Committee recommends that the Bill be amended to apply a sunset period of five years to proposed section 122.4 ('Unauthorised disclosure of information by current and former Commonwealth officers etc')</p> | <p>Accepted.</p> |
| <p>24. Review of existing secrecy offences in other legislation</p> <p>The Committee recommends that, following the passage of the general secrecy offences in Schedule 2 to the Bill, the Attorney-General initiate a review of existing secrecy offences contained in other legislation, taking into account the set of principles contained in the Australian Law Reform Commission's report, <i>Secrecy Laws and Open Government in Australia</i>.</p> | <p>Accepted.</p> |
| <p>25. Protections for IGIS</p> <p>The Committee recommends that the Bill be amended to ensure that staff of the Inspector-General of Intelligence and Security are appropriately protected, noting the limitations on the Inspector-General and members of staff of the Inspector-General giving evidence under the <i>Inspector-General of Intelligence and Security Act 1986</i>. The Committee recommends that this amendment be developed in consultation with the Inspector-General and her Office.</p> | <p>Accepted.</p> <p>The Inspector-General of Intelligence and Security and her Office were consulted and have agreed to these amendments.</p> |

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| Recommendation | Response |
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| <p>26. Defences in section 122.5</p> <p>The Committee recommends that the following proposed defence be broadened to cover all dealings with information, rather than being limited to communication of information:</p> <ul style="list-style-type: none"> • proposed section 122.5(3) – relating to the Inspector-General of Intelligence and Security, the Commonwealth Ombudsman and the Law Enforcement Integrity Commissioner • proposed section 122.5(4) – relating the <i>Public Interest Disclosure Act 2013</i> • proposed section 122.5(5) – relating to information provided to a court or tribunal, and • propose section 122.5(8) – relating to information that has been previously communicated. | <p>Accepted.</p> |
| <p>27. Defence for journalists</p> <p>The Committee recommends that the Attorney-General's proposed amendments to the defence for journalists at proposed section 122.5(6), and the associated amendments at 122.5(7), be implemented. This includes expanding the defence to all persons engaged in reporting news, presenting current affairs or expressing editorial content in news media where the person reasonably believed that dealing with or holding the information was in the public interests.</p> <p>The Committee also recommends that the Government consider further refinements to the propose defence in order to</p> <ul style="list-style-type: none"> • make explicit the editorial support staff are covered by the defence, including legal advisors and administrative staff, • ensure editorial staff and lawyers, who are engaging with the substance of the information, be required to hold a reasonable belief that their conduct is in the public interest, and • allow administrative support staff working at the direction of a journalist, editor or lawyer who holds the reasonable belief, to benefit from the defence. | <p>Accepted.</p> |
| <p>28. Defence for journalists</p> <p>The Committee recommends that the Bill be amended to remove proposed paragraph 122.5(7)(d), which currently limits the availability of the defence for persons engaged in reporting news.</p> | <p>Accepted.</p> |

| Recommendation | Response |
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| <p>29. Defence for reporting maladministration in Commonwealth criminal proceedings</p> <p>The Committee recommends that the Bill be amended to provide for a defence for a person who reports, to an appropriate entity, malpractice or maladministration in the prevention, detection, investigation, prosecution or punishment of a criminal offence against a law of the Commonwealth or the functions of the Australian Federal Police under paragraph 8(1)(be) of the <i>Australian Federal Police Act 1979</i> or the <i>Proceeds of Crimes Act 2002</i>.</p> | <p>Accepted.</p> <p>This defence (at subsection 122.5(4A)) has been broadened to also cover persons who are dealing with information for the purpose of reporting an alleged crime against a law of the Commonwealth.</p> |
| <p>30. Defence for obtaining legal advice</p> <p>The Committee recommends that the Bill be amended to include a defence for dealing with information for the purpose of obtaining legal advice.</p> | <p>Accepted.</p> |
| <p>31. Obligations and immunities</p> <p>The Committee recommends that the Bill be amended to clarify that the secrecy offences in Schedule 2 do not override the obligations and immunities included in the:</p> <ul style="list-style-type: none"> • <i>Freedom of Information Act 1982</i>, • <i>Privacy Act 1988</i>, • <i>Ombudsman Act 1976</i>, • <i>Inspector-General of Intelligence and Security Act 1986</i>, or • <i>Public Interest Disclosure Act 2013</i>. | <p>Accepted.</p> <p>The legislation listed in the recommendation does not need to be specifically included in the provision, which applies to <u>any</u> other right, privilege, immunity or defence.</p> |
| <p>32. Information provided to IGIS – statutory immunity</p> <p>The Committee recommends that the <i>Inspector-General of Intelligence and Security Act 1986</i> be amended to extend statutory immunity to persons who voluntarily provide information to the Inspector-General or her office.</p> | <p>Accepted.</p> |
| <p>33. Consent to prosecute</p> <p>The Committee recommends that Bill be amended to require the Attorney-General's consent for a prosecution under the proposed secrecy offences in Division 122 of the Bill. In deciding whether to consent, the Attorney-General should be required to consider whether the conduct might have been authorised or is otherwise covered by an exception under any of the proposed defence in the Division.</p> | <p>Accepted.</p> |

| Recommendation | Response |
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| <p>34. Reduction of penalties</p> <p>Consistent with recommendations of the Australian Law Reform Commission, the Committee recommends that the Bill be amended to reduce the maximum penalty for the secrecy offences in proposed sections 122.1, 122.2 and 122.4A to seven years' imprisonment for conduct involving communication of information, and three years' imprisonment for other dealings.</p> <p>The maximum penalty for the aggravated secrecy offences in proposed section 122.3 should be ten years' imprisonment for conduct involving communication of information (consistent with the most serious secrecy offences in the <i>Australian Security Intelligence Organisation Act 1979</i> and the <i>Intelligence Services Act 2001</i>), and five years' for other dealings.</p> | <p>Accepted.</p> <p>The penalties for the offences at section 122.4A applying to non-Commonwealth officers have also been reduced to ensure they remain lower than the penalties applying to current and former Commonwealth officers.</p> |
| Espionage | |
| <p>35. Definition of 'concerns'</p> <p>The Committee recommends that the Bill be amended to define the term 'concerns' national security.</p> | <p>Accepted.</p> |
| <p>36. Definition of 'make available'</p> <p>The Committee recommends that the Bill be amended to define the term 'made available' for the purpose of the espionage offences.</p> | <p>Accepted.</p> |
| <p>37. Prior publication defence</p> <p>The Committee recommends that the Bill be amended to introduce a prior publication defence for the proposed espionage offences. The defence should be appropriately drafted to ensure the effectiveness of the provisions whilst protecting freedom of expression and the implied constitutional right to freedom of political communication.</p> <p>The Bill should further be amended to require that, prior to instituting proceedings to commit a person to trial for an espionage offence, the Attorney-General must consider whether the conduct might be authorised in any of the defence outline in Division 91</p> | <p>Accepted.</p> |

| Recommendation | Response |
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| <p>38. 'Primary purpose' of making information available to foreign principal</p> <p>The Committee recommends that the Attorney-General's proposed amendments to narrow the scope of the offence in proposed section 91.3 of the Bill be implemented. This includes requiring that the person dealt with the information for the 'primary purpose' of making it available to a foreign principal, limiting the offence to information or articles that have a security classification, and removing strict liability from the offence.</p> | Accepted. |
| <p>39. Scope of defences – 'in accordance with a law of the Commonwealth'</p> <p>The Committee recommends that the Explanatory memorandum be amended to clarify the intended scope of the proposed defence in Division 91 for dealings 'in accordance with a law of the Commonwealth'. The Explanatory Memorandum should provide examples of situations in which conduct would be excused by the specific defence, but not the general defence of lawful authority available under section 10.5 of the Criminal Code.</p> | Accepted. |
| <p>40. Aggravating factor 91.6(1)(b)(v)</p> <p>The Committee recommends that the Bill be amended to limit the aggravating factor at subparagraph 91.6(1)(b)(v), in relation to the proposed espionage offences, to persons holding an Australian Government security clearance that allows the person to access information with a classification of SECRET or above.</p> | Accepted. |
| <p>41. Right to freedom of expression</p> <p>The Committee recommends that the Explanatory Memorandum be amended so that the Statement of Compatibility with Human Rights explicitly addresses the limitation to the right to freedom of expression imposed by the espionage offences.</p> | Accepted. |
| <p>Foreign Interference and theft of trade secrets</p> | |
| <p>42. Material support</p> <p>The Committee recommends that the Bill be amended to explicitly provide that the term 'support' refers to 'material support', and that the Explanatory Memorandum provide examples of conduct that will not constitute material support, for example, news reporting, editorial or opinion writing and humanitarian assistance.</p> | Accepted. |

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| Recommendation | Response |
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| <p>43. Online theft of trade secrets</p> <p>The Committee recommends that the Explanatory Memorandum be amended to clarify whether the offence is intended to capture the theft of trade secrets by hacking or other online vectors.</p> | Accepted. |
| Sabotage | |
| <p>44. Introducing vulnerability offences</p> <p>Consistent with the other sabotage offences in the Bill, the Committee recommends that proposed sections 82.7 and 82.8 (introducing vulnerability with intention, or recklessness, as to national security) be amended to remove the following elements:</p> <ul style="list-style-type: none"> • harm or prejudice to Australia's economic interests, • disruption to the functions of the government of the Commonwealth, or a State or of a Territory, and damage to public infrastructure. | Accepted. |
| <p>45. Defence for private owners of public infrastructure</p> <p>The Committee recommends that the defence at proposed section 82.10, in relation to the Bill's sabotage offences, be broadened to include conduct engaged in on behalf of a private owner or operator of infrastructure, in addition to public officials.</p> | Accepted. |
| Treason, treachery and other threats to security | |
| <p>46. Advocating mutiny - definition of 'advocating'</p> <p>The Committee recommends that the Bill be amended to define the term 'advocating' for the purpose of proposed section 83.1 (advocating mutiny), consistent with other existing offences in the <i>Criminal Code</i>.</p> | Accepted. |
| <p>47. Advocating mutiny - good faith defence</p> <p>The Committee recommends that the Bill be amended to provide that the 'good' faith defence at section 80.3 of the Criminal Code is available for the offence of advocating mutiny.</p> | Accepted. |

| Recommendation | Response |
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| <p>48. Advocating mutiny - consent to prosecute consideration</p> <p>The Committee recommends that proposed section 83.5(4) 'Consent of Attorney-General required for prosecutions' be amended so that, for an offence against section 83.1 (advocating mutiny), the Attorney-General must consider whether conduct might be authorised in a way mentioned in section 80.3.</p> | Accepted. |
| <p>49. Military style training - humanitarian defence</p> <p>The Committee recommends that proposed section 83.3 (military style training involving foreign government) be amended to provide a defence against prosecution for those engaged in humanitarian work, including compliance training on the laws of armed conflict.</p> | Accepted. |
| <p>50. Interference with political rights and duties – penalty</p> <p>The Committee recommends that the Government reduce the penalty for the offence of 'interference with political rights and duties' at proposed section 83.4 from 10 years' imprisonment.</p> | Accepted. |
| <p>51. Interference with political rights and duties - contempt of Parliament</p> <p>The Committee recommends that the Explanatory Memorandum be amended to clarify that nothing in the Bill affects the Parliament's powers in relation to contempt.</p> | Accepted. |
| <p>Schedules 3 – 5 and consequential amendments</p> | |
| <p>52. Telecommunication interception powers</p> <p>The Committee recommends that the Explanatory Memorandum be amended so that the Statement of Compatibility with Human Rights explicitly addresses the necessity, reasonableness and proportionality of the expansion of telecommunications interceptions powers to all of the offences specified in Schedule 4 of the Bill.</p> | Accepted. |

| Recommendation | Response |
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| <p>53. Australian Citizenship Act – section 35A</p> <p>The Committee recommends that Schedule 1, item 29 of the Bill be amended such that section 35A of the <i>Australia Citizenship Act 2007</i> applies to the foreign interference offences in the Bill, and does not apply to</p> <ul style="list-style-type: none"> • proposed section 82.9 (preparing for or planning sabotage offence), • proposed section 83.4 (interference with political rights and duties), or • proposed Part 5.6 – Secrecy of information | <p>Accepted.</p> |
| <p>54. Australian Citizenship Act – national security offence</p> <p>The Committee recommends that the Bill be amended such that the phrase ‘national security offence’ in the <i>Australian Citizenship Act 2007</i> is limited to those offences which contain a clear nexus to national security.</p> | <p>Accepted.</p> |
| <p>55. Citizenship amendments and statelessness</p> <p>The Committee recommends that the Explanatory Memorandum be amended so that the Statement of Compatibility with Human Rights explicitly addresses the interaction between the proposed consequential amendments to citizenship application provisions, and Australia’s international obligations regarding stateless persons.</p> | <p>Accepted.</p> <p>The Supplementary Explanatory Memorandum explicitly addressed Australia’s international obligations regarding stateless persons. This is addressed in the body of the Supplementary Explanatory Memorandum rather than the Statement of Compatibility, which, consistent with the <i>Human Rights (Parliamentary Scrutiny) Act 2011</i> is intended to address the human rights within the definition in section 3 of that Act. This does not include the Statelessness Conventions.</p> |
| <p>56. Presumption against bail</p> <p>The Committee recommends that the Bill be amended to provide that section 15AA(1) of the Crimes Act 1914 applies to an offence against proposed Division 80, Division 91 and Division 92 of the Criminal Code only if:</p> <ul style="list-style-type: none"> • the death of a person is alleged to have been caused by conduct that is a physical element of the offence, or • conduct that is a physical element of the offence carried a substantial risk of causing the death of a person. | <p>Accepted.</p> |

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| Recommendation | Response |
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| <p>57. Application of s93.2 Criminal Code – hearing in camera etc.</p> <p>The Committee recommends that the Explanatory Memorandum for the Bill be amended to clarify the scope and application of section 93.2 of the <i>Criminal Code</i>.</p> | Accepted. |
| <p>58. Minimum non-parole periods</p> <p>The Committee recommends that the Bill be amended to provide that section 19AG of the <i>Crimes Act 1914</i>, relating to minimum non-parole periods for certain offences, applies to an espionage offence against section 91.1(1) or 91.2(1), rather than all espionage offences in Division 91.</p> | Accepted. |
| Concluding recommendations | |
| <p>59. INSLM Review</p> <p>The Committee recommends that, after a period of three years, the Independent National Security Legislation Monitor be required to conduct a review of Division 82 (sabotage), Part 5.2 (espionage, foreign interference, theft of trade secrets), and Part 5.6 (secrecy) of the <i>Criminal Code</i>.</p> <p>A copy of the report on the independent review should be provided to the Attorney-General, who should be required to provide it to the Committee. Any amendments proposed to be made to the laws as a result of the review should be referred to the Committee for inquiry.</p> | Accepted. |
| <p>60. Correction of drafting errors</p> <p>The Committee recommends that the Attorney-General's Department review the Bill and Explanatory Memorandum in detail with a view to making amendments to correct any drafting errors prior to the conclusion of debate in the Parliament.</p> | Accepted. |

2016-2017-2018

ATTACHMENT B

The Parliament of the
Commonwealth of Australia

HOUSE OF REPRESENTATIVES

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| OPC drafter to complete | |
| 1. Do any of these amendments need a message? (See H of R Practice, sixth ed, pp. 423-427, and OGC advice.) If yes: <ul style="list-style-type: none"> List relevant amendments— Prepare message advice (see DD 4.9) Give a copy of the amendments and the message advice to the Legislation area. | No |
| 2. Are these amendments for consideration by the Senate? If yes, go on to question 3. | No |
| 3. Should any of these amendments be moved in the Senate as requests? (See OGC advice) If yes: <ul style="list-style-type: none"> List relevant amendments— Prepare section 53 advice and fax to relevant Ministers, the PLO in the Senate and the PLO in the House of Reps (see DD 4.9); Give a copy of the request advice to the Legislation area with the copy of the amendments (see question 1). | N/a |

National Security Legislation Amendment (Espionage and Foreign Interference) Bill 2017

(Government)

- (1) Clause 2, page 3 (at the end of the table), add:

9. Schedule 6 The day after this Act receives the Royal
Assent.

[protection for persons providing information voluntarily to the Inspector-General]

- (2) Schedule 1, page 4 (after line 13), after item 3, insert:

3A At the end of Subdivision A of Division 80 of the *Criminal Code*

Add:

80.1AAA Expressions also used in the *Australian Security Intelligence Organisation Act 1979*

The meaning of an expression in this Division does not affect the meaning of that expression in the *Australian Security Intelligence Organisation Act 1979*, unless that Act expressly provides otherwise.

[meaning of expressions not to affect meaning in ASIO Act]

- (3) Schedule 1, item 5, page 6 (line 15), omit “section 83.4”, substitute “sections 83.1 and 83.4”.
[good faith defence for offence against section 83.1]

- (4) Schedule 1, item 8, page 6 (after line 28), after the heading to Division 82, insert:

Subdivision A—Preliminary

[meaning of expressions not to affect meaning in ASIO Act]

- (5) Schedule 1, item 8, page 7 (before line 1), before the definition of *damage to public infrastructure*, insert:

advantage: conduct will not *advantage* the national security of a foreign country if the conduct will advantage Australia’s national security to an equivalent extent.

[equivalent advantage to Australia’s national security]

- (6) Schedule 1, item 8, page 7 (after line 17), after the definition of *national security*, insert:

prejudice: embarrassment alone is not sufficient to *prejudice* Australia’s national security.

[embarrassment alone is not sufficient for prejudice]

- (7) Schedule 1, item 8, page 8 (after line 25), after section 82.2, insert:

82.2A Expressions also used in the *Australian Security Intelligence Organisation Act 1979*

The meaning of an expression in this Division does not affect the meaning of that expression in the *Australian Security Intelligence Organisation Act 1979*, unless that Act expressly provides otherwise.

Subdivision B—Offences

[meaning of expressions not to affect meaning in ASIO Act]

- (8) Schedule 1, item 8, page 11 (lines 17 to 24), omit paragraph 82.7(d), substitute:
(d) the person engages in the conduct with the intention that prejudice to Australia’s national security will occur (whether at the time or at a future time).
[removal of elements relating to economic interests etc.]
- (9) Schedule 1, item 8, page 12 (lines 6 to 13), omit paragraph 82.8(d), substitute:
(d) the person engages in the conduct reckless as to whether prejudice to Australia’s national security will occur (whether at the time or at a future time).
[removal of elements relating to economic interests etc.]
- (10) Schedule 1, item 8, page 13 (lines 1 to 9), omit section 82.10, substitute:

82.10 Defences

- (1) It is a defence to a prosecution for an offence by a person against this Division if:
- (a) the person is, at the time of the offence, a public official; and
 - (b) the person engaged in the conduct in good faith in the course of performing duties as a public official; and
 - (c) the conduct is reasonable in the circumstances for the purpose of performing those duties.

Note: A defendant bears an evidential burden in relation to the matter in this subsection (see subsection 13.3(3)).

- (2) It is a defence to a prosecution for an offence by a person against this Division if:
- (a) the person is, at the time of the offence:
 - (i) an owner or operator of the public infrastructure; or
 - (ii) acting on behalf of, or with the consent of, an owner or operator of the public infrastructure; and
 - (b) the person engaged in the conduct in good faith; and
 - (c) the conduct is within the lawful authority of the owner or operator; and
 - (d) the conduct is reasonable in the circumstances for the purpose of exercising that lawful authority.

Note: A defendant bears an evidential burden in relation to the matter in this subsection (see subsection 13.3(3)).

[defence for public officials; defence for owners etc. of public infrastructure]

- (11) Schedule 1, item 8, page 15 (before line 2), before section 83.1, insert:

83.1A Expressions also used in the *Australian Security Intelligence Organisation Act 1979*

The meaning of an expression in this Division does not affect the meaning of that expression in the *Australian Security Intelligence Organisation Act 1979*, unless that Act expressly provides otherwise.

[meaning of expressions not to affect meaning in ASIO Act]

- (12) Schedule 1, item 8, page 15 (before line 19), before the penalty, insert:

Note: The defence in section 80.3 for acts done in good faith applies to this offence.

[good faith defence for offence against section 83.1]

- (13) Schedule 1, item 8, page 15 (after line 19), after subsection 83.1(1) (after the penalty), insert:

- (1A) For the purposes of this section:

- (a) a person **advocates** mutiny if the person counsels, promotes, encourages or urges mutiny; and
- (b) a reference to advocating mutiny includes a reference to:
 - (i) advocating mutiny even if mutiny does not occur; and
 - (ii) advocating a specific mutiny; and
 - (iii) advocating more than one mutiny.

[meaning of advocates]

- (14) Schedule 1, item 8, page 16 (line 15), at the end of the heading to section 83.3, add “etc.”.

[definition of foreign government principal]

- (15) Schedule 1, item 8, page 16 (line 24), at the end of subparagraph 83.3(1)(c)(i), add “or a foreign political organisation within the meaning of that Part (see section 90.1)”.
- [definition of foreign government principal]**

- (16) Schedule 1, item 8, page 16 (lines 26 and 27), omit “a person acting on behalf of a foreign government principal”, substitute “foreign political organisation, or a person acting on behalf of a foreign government principal or foreign political organisation”.
- [definition of foreign government principal]**

- (17) Schedule 1, item 8, page 17 (after line 27), after subsection 83.3(4), insert:

Defence—humanitarian assistance etc.

- (4A) Subsection (1) does not apply to a person in relation to conduct engaged in by the person solely or primarily for one or more of the following purposes:

- (a) providing aid of a humanitarian nature;
- (b) performing an official duty for:
 - (i) the United Nations or an agency of the United Nations; or
 - (ii) the International Committee of the Red Cross.

Note: A defendant bears an evidential burden in relation to the matter in this subsection (see subsection 13.3(3)).

[defence of humanitarian assistance, official duties for offence against section 83.3]

- (18) Schedule 1, item 8, page 18 (line 5), omit “another”, substitute “other”.

[technical]

- (19) Schedule 1, item 8, page 18 (line 11), omit “10”, substitute “3”.

[maximum penalty for offence against section 83.4]

- (20) Schedule 1, item 8, page 18 (lines 28 and 29), omit “or (3)”, substitute “, (3) or (4A)”.

[defence of humanitarian assistance, official duties for offence against section 83.3]

- (21) Schedule 1, item 8, page 18 (line 30), after “against section”, insert “83.1 or”.

[good faith defence for offence against section 83.1]

- (22) Schedule 1, item 10, page 19 (before line 4), before the definition of *deal*, insert:

advantage: conduct will not *advantage* the national security of a foreign country if the conduct will advantage Australia’s national security to an equivalent extent.

concerns: information or an article *concerns* Australia’s national security if the information or article relates to, or is connected with, or is of interest or importance to, or affects, Australia’s national security.

[equivalent advantage to Australia’s national security; concerns Australia’s national security]

- (23) Schedule 1, item 10, page 19 (line 16), after “See also”, insert “the definition of *make available* in this subsection and”.

[definition of make available]

- (24) Schedule 1, item 10, page 19 (lines 19 and 20), omit the definition of *foreign political organisation*, substitute:

foreign political organisation includes:

- (a) a foreign political party; and
- (b) a foreign organisation that exists primarily to pursue political objectives; and
- (c) a foreign organisation that exists to pursue militant, extremist or revolutionary objectives.

[definition of foreign political organisation]

- (25) Schedule 1, item 12, page 19 (before line 27), before the definition of *national security*, insert:

make available information or an article includes:

- (a) place it somewhere it can be accessed by another person; and
- (b) give it to an intermediary to give to the intended recipient; and
- (c) describe how to obtain access to it, or describe methods that are likely to facilitate access to it (for example, set out the name of a website, an IP address, a URL, a password, or the name of a newsgroup).

[definition of make available]

- (26) Schedule 1, item 12, page 19 (after line 27), after the definition of *national security*, insert:

prejudice: embarrassment alone is not sufficient to *prejudice* Australia's national security.

[embarrassment alone is not sufficient for prejudice]

- (27) Schedule 1, item 16, page 20 (after line 17), after paragraph 90.2(a), insert:

- (aa) a foreign political organisation;

[definition of foreign government principal]

- (28) Schedule 1, item 16, page 20 (line 23), after "paragraph", insert "(aa),".

[definition of foreign government principal]

- (29) Schedule 1, item 16, page 20 (line 26), after "paragraph (a),", insert "(aa),".

[definition of foreign government principal]

- (30) Schedule 1, item 16, page 21 (line 11), omit paragraph (g) of the definition of *foreign government principal* in section 90.3.

[definition of foreign government principal]

- (31) Schedule 1, item 16, page 22 (lines 9 and 10), omit subsection 90.5(1), substitute:

(1) *Security classification* means:

- (a) a classification of secret or top secret that is applied in accordance with the policy framework developed by the Commonwealth for the purpose (or for purposes that include the purpose) of identifying information:
 - (i) for a classification of secret—that, if disclosed in an unauthorised manner, could be expected to cause serious damage to the national interest, organisations or individuals; or
 - (ii) for a classification of top secret—that, if disclosed in an unauthorised manner, could be expected to cause exceptionally grave damage to the national interest; or
- (b) any equivalent classification or marking prescribed by the regulations.

(1A) For the purposes of a reference, in an element of an offence in this Part, to security classification, strict liability applies to the element that:

- (a) a classification is applied in accordance with the policy framework developed by the Commonwealth for the purpose (or for purposes that include the purpose) of identifying the information mentioned in subparagraph (1)(a)(i) or (ii); or
- (b) a classification or marking is prescribed by the regulations as mentioned in paragraph (1)(b).

[definition of security classification]

(32) Schedule 1, item 16, page 22 (lines 13 and 14), omit “policies of the Government of the Commonwealth in relation to protective security”, substitute “policy framework mentioned in paragraph (1)(a)”.

[definition of security classification]

(33) Schedule 1, item 16, page 22 (line 19), at the end of subsection 90.5(3), add “, if the instrument or other writing is publicly available”.

[definition of security classification]

(34) Schedule 1, item 16, page 22 (after line 19), after section 90.5, insert:

90.6 Expressions also used in the *Australian Security Intelligence Organisation Act 1979*

The meaning of an expression in this Part does not affect the meaning of that expression in the *Australian Security Intelligence Organisation Act 1979*, unless that Act expressly provides otherwise.

[meaning of expressions not to affect meaning in ASIO Act]

(35) Schedule 1, item 17, page 22 (line 25), after “will be”, insert “communicated or”.

[communicated or made available]

(36) Schedule 1, item 17, page 23 (line 7), after “being”, insert “communicated or”.

[communicated or made available]

(37) Schedule 1, item 17, page 23 (line 22), after “being”, insert “communicated or”.

[communicated or made available]

(38) Schedule 1, item 17, page 23 (lines 25 and 26), omit subsection 91.1(3).

[strict liability]

(39) Schedule 1, item 17, page 24 (line 5), after “will be”, insert “communicated or”.

[communicated or made available]

(40) Schedule 1, item 17, page 24 (line 13), after “being”, insert “communicated or”.

[communicated or made available]

(41) Schedule 1, item 17, page 24 (line 24), after “being”, insert “communicated or”.

[communicated or made available]

(42) Schedule 1, item 17, page 25 (after line 3), after paragraph 91.3(1)(a), insert:

- (aa) the person deals with the information or article for the primary purpose of communicating the information or article, or making it available, to a foreign principal or a person acting on behalf of a foreign principal; and

[primary purpose of dealing]

- (43) Schedule 1, item 17, page 25 (line 5), after “being”, insert “communicated or”.

[communicated or made available]

- (44) Schedule 1, item 17, page 25 (lines 7 to 9), omit paragraph 91.3(1)(c), substitute:

(c) the information or article has a security classification.

[dealing with security classified information]

- (45) Schedule 1, item 17, page 25 (line 11), omit “paragraph (1)(b)”, substitute “paragraphs (1)(aa) and (b)”.

[primary purpose of dealing]

- (46) Schedule 1, item 17, page 25 (line 15), omit subsection 91.3(3), substitute:

(3) Strict liability applies to paragraph (1)(aa).

[strict liability; primary purpose of dealing]

- (47) Schedule 1, item 17, page 25 (line 17), after “for an offence”, insert “by a person”.

[technical—for consistency]

- (48) Schedule 1, item 17, page 25 (line 26), omit “of an offence”, substitute “for an offence by a person”.

[technical—for consistency]

- (49) Schedule 1, item 17, page 25 (after line 32), at the end of section 91.4, add:

- (3) It is a defence to a prosecution for an offence by a person against section 91.1, in which the prosecution relies on subparagraph 91.1(1)(c)(ii) or (2)(c)(ii), or against section 91.3, if:

- (a) the person did not make or obtain the information or article by reason of any of the following:

(i) the person being, or having been, a Commonwealth officer (within the meaning of Part 5.6);

(ii) the person being otherwise engaged to perform work for a Commonwealth entity;

(iii) an arrangement or agreement to which the Commonwealth or a Commonwealth entity is party and which allows for the exchange of information; and

(b) the information or article has already been communicated, or made available, to the public (the ***prior publication***); and

(c) the person was not involved in the prior publication (whether directly or indirectly); and

(d) at the time the person deals with the information or article, the person believes that doing so will not prejudice Australia’s national security; and

(e) having regard to the nature, extent and place of the prior publication, the person has reasonable grounds for that belief.

Note: A defendant bears an evidential burden in relation to the matters in this subsection (see subsection 13.3(3)).

[defence of prior publication]

Sensitive: Legal

- (50) Schedule 1, item 17, page 26 (line 15), after “section 91.1”, insert “(other than subsection 91.1(1))”.
- [technical—for clarity]***
- (51) Schedule 1, item 17, page 26 (lines 19 and 20), omit subparagraph 91.6(1)(b)(i).
- [security classification]***
- (52) Schedule 1, item 17, page 26 (line 29), at the end of subparagraph 91.6(1)(b)(v), add “allowing access to information that has, or articles that have, a security classification of at least secret”.
- [aggravated offence involving person holding security clearance]***
- (53) Schedule 1, item 17, page 27 (line 4), omit subsection 91.6(3).
- [strict liability]***
- (54) Schedule 1, item 17, page 29 (line 16), after “for an offence”, insert “by a person”.
- [technical—for consistency]***
- (55) Schedule 1, item 17, page 29 (line 25), omit “of an offence”, substitute “for an offence by a person”.
- [technical—for consistency]***
- (56) Schedule 1, item 17, page 31 (line 29), after “for an offence”, insert “by a person”.
- [technical—for consistency]***
- (57) Schedule 1, item 17, page 35 (line 1), omit “deceptive”, substitute “involves deception”.
- [technical—for consistency]***
- (58) Schedule 1, item 17, page 36 (line 18), after “for an offence”, insert “by a person”.
- [technical—for consistency]***
- (59) Schedule 1, item 17, page 37 (line 5), omit “support or resources”, substitute “resources, or material support,”.
- [material support]***
- (60) Schedule 1, item 17, page 37 (line 14), omit “support or resources”, substitute “resources, or material support, “.
- [material support]***
- (61) Schedule 1, item 17, page 38 (line 18), after “for an offence”, insert “by a person”.
- [technical—for consistency]***
- (62) Schedule 1, item 18, page 40 (lines 6 to 8), omit subsection 93.1(1), substitute:
- (1) Proceedings for the commitment of a person for trial for an offence against this Part must not be instituted without:
- (a) the written consent of the Attorney-General; and
- (b) for proceedings that relate to information or an article that has a security classification—a certification by the Attorney-General that, at the time of the conduct that is alleged to constitute the offence, it was appropriate that the information or article had a security classification.
- [certification of security classified information]***

- (63) Schedule 1, item 18, page 40 (line 10), omit “consent having been given”, substitute “consent or certification having been obtained”.

[certification of information]

- (64) Schedule 1, item 18, page 40 (line 20), omit “subsection 91.4(1)”, substitute “section 91.4”.

[defences to be considered by Attorney-General]

- (65) Schedule 1, item 18, page 40 (line 23), omit “subsection 91.9(1)”, substitute “section 91.9”.

[defences to be considered by Attorney-General]

- (66) Schedule 1, item 20, page 41 (lines 3 to 17), omit section 93.3.

[evidentiary certificate]

- (67) Schedule 1, item 21, page 42 (line 13), omit “, document or other article”, substitute “or document”.

[technical—to avoid repetition]

- (68) Schedule 1, item 22, page 43 (lines 6 and 7), omit subsection 132.8A(3).

[technical—to avoid redundancy]

- (69) Schedule 1, item 24, page 43 (before line 13), before the definition of *constitutional trade and commerce*, insert:

Australian Government security clearance means a security clearance given by the Australian Government Security Vetting Agency or by another Commonwealth, State or Territory agency that is authorised or approved by the Commonwealth to issue security clearances.

[definition of Australian Government security clearance]

- (70) Schedule 1, item 28, page 45 (line 15), after “related offences)”, insert “other than section 83.4 (interference with political rights and duties)”.

[definition of national security offence in Australian Citizenship Act 2007]

- (71) Schedule 1, item 29, page 45 (line 25), after “(sabotage)”, insert “other than section 82.9 (preparing for or planning sabotage offence)”.

[section 35A cessation of citizenship]

- (72) Schedule 1, item 29, page 45 (after line 27), after subparagraph 35A(1)(a)(iib), insert:
(iic) a provision of Division 92 of the *Criminal Code* (foreign interference);

[section 35A cessation of citizenship]

- (73) Schedule 1, item 39, page 47 (lines 16 to 19), omit all the words from and including “if it is alleged” to the end of paragraph 15AA(2)(e), substitute “if:

- (i) the death of a person is alleged to have been caused by conduct that is a physical element of the offence; or
- (ii) conduct that is a physical element of the offence carried a substantial risk of causing the death of a person.”.

[bail not to be granted in Division 92 offence unless death or substantial risk of death]

- (74) Schedule 1, page 47 (after line 29), after item 42, insert:

42A Paragraph 19AG(1)(c)

Omit “or 91”.

42B After paragraph 19AG(1)(c)

Insert:

; (d) an offence against subsection 91.1(1) or 91.2(1) of the *Criminal Code*.

[non-parole period for espionage offence]

(75) Schedule 1, page 47 (after line 31), after item 43, insert:

Criminal Code Act 1995

43A Paragraph 5(2)(d)

Omit “treason, urging violence and advocating terrorism or genocide”, substitute “treason and related offences”.

43B Paragraph 5(2)(e)

Omit “offences relating to espionage and similar activities”, substitute “espionage and related offences”.

[technical—consequential amendments]

(76) Schedule 1, page 48 (after line 19), after item 48, insert:

48A Subparagraphs 203(1)(c)(ii) and (iia)

Omit “(i) or (ia)”, substitute “(ia) or (ib)”.

[technical—consequential amendments]

(77) Schedule 1, page 48 (after line 26), at the end of the Schedule, add:

Part 3—Review by Independent National Security Legislation Monitor

Independent National Security Legislation Monitor Act 2010

51 Subsection 6(1B)

Repeal the subsection, substitute:

(1B) The Independent National Security Legislation Monitor must, as soon as practicable after the third anniversary of the day the *National Security Legislation Amendment (Espionage and Foreign Interference) Act 2018* receives the Royal Assent, begin a review under paragraph (1)(a) of the following provisions of Chapter 5 of the *Criminal Code*:

- (a) Division 82 (sabotage);
- (b) Part 5.2 (espionage and related offences);
- (c) Part 5.6 (secrecy of information).

[review by Independent National Security Legislation Monitor]

(78) Schedule 2, item 6, page 50 (lines 1 to 6), omit paragraph (a) of the definition of *cause harm to Australia’s interests* in subsection 121.1(1), substitute:

- (a) interfere with or prejudice the prevention, detection, investigation, prosecution or punishment of a criminal offence against a law of the Commonwealth; or

[cause harm to Australia's interests]

- (79) Schedule 2, item 6, page 50 (lines 22 to 25), omit paragraphs (d) and (e) of the definition of *cause harm to Australia's interests* in subsection 121.1(1).

[cause harm to Australia's interests]

- (80) Schedule 2, item 6, page 50 (line 26), omit "the public", substitute "the Australian public".

[cause harm to Australia's interests]

- (81) Schedule 2, item 6, page 50 (line 27), omit "the public.", substitute "the Australian public; or".

[cause harm to Australia's interests]

- (82) Schedule 2, item 6, page 50 (after line 27), at the end of the definition of *cause harm to Australia's interests* in subsection 121.1(1), add:

- (g) harm or prejudice the security or defence of Australia.

[cause harm to Australia's interests]

- (83) Schedule 2, item 6, page 51 (line 4), at the end of the definition of *Commonwealth officer* in subsection 121.1(1), add:

; but does not include an officer or employee of, or a person engaged by, the Australian Broadcasting Corporation or the Special Broadcasting Service Corporation.

[reporting news etc.]

- (84) Schedule 2, item 6, page 51 (line 5), omit "the meaning given by subsection 90.1(1)", substitute "the same meaning as in Part 5.2".

[definition of deal]

- (85) Schedule 2, item 6, page 51 (after line 5), at the end of the definition of *deal* in subsection 121.1(1), add:

Note: For the meaning of *deal* in that Part, see subsections 90.1(1) and (2).

[definition of deal]

- (86) Schedule 2, item 6, page 51 (after line 12), after the definition of *domestic intelligence agency* in subsection 121.1(1), insert:

foreign military organisation means:

- (a) the armed forces of the government of a foreign country; or
(b) the civilian component of:
(i) the Department of State of a foreign country; or
(ii) a government agency in a foreign country;
that is responsible for the defence of the country.

[reporting news etc.]

- (87) Schedule 2, item 6, page 51 (lines 17 to 19), omit paragraph (b) of the definition of *inherently harmful information* in subsection 121.1(1).

[inherently harmful information]

- (88) Schedule 2, item 6, page 51 (lines 23 to 26), omit paragraph (d) of the definition of *inherently harmful information* in subsection 121.1(1).

[inherently harmful information]

- (89) Schedule 2, item 6, page 52 (after line 2), after the definition of *Regulatory Powers Act* in subsection 121.1(1), insert:

security classification has the meaning given by section 90.5.

[definition of security classification]

- (90) Schedule 2, item 6, page 52 (line 4), omit “(within the meaning of section 90.4)”.

[definition of security classification]

- (91) Schedule 2, item 6, page 52 (after line 9), at the end of section 121.1, add:

- (3) For the purposes of a reference, in an element of an offence in this Part, to security classified information or security classification, strict liability applies to the element that:
- (a) a classification is applied in accordance with the policy framework developed by the Commonwealth for the purpose (or for purposes that include the purpose) of identifying the information mentioned in subparagraph 90.5(1)(a)(i) or (ii); or
 - (b) a classification or marking is prescribed by the regulations as mentioned in paragraph 90.5(1)(b).

Note: See the definitions of *security classified information* in subsection (1) and *security classification* in section 90.5.

[definition of security classification]

- (92) Schedule 2, item 6, page 52 (line 17), at the end of subsection 121.2(2), add “, if the instrument or other writing is publicly available”.

[definition of security classification]

- (93) Schedule 2, item 6, page 52 (lines 18 to 28), omit section 121.3.

[evidentiary certificate]

- (94) Schedule 2, item 6, page 53 (line 2), omit the heading to section 122.1, substitute:

122.1 Communication and other dealings with inherently harmful information by current and former Commonwealth officers etc.

[offences by current and former Commonwealth officers etc.]

- (95) Schedule 2, item 6, page 53 (line 7), omit “or any other”.

[offences by current and former Commonwealth officers etc.]

- (96) Schedule 2, item 6, page 53 (line 11), omit “Note”, substitute “Note 1”.

[fault elements]

- (97) Schedule 2, item 6, page 53 (after line 11), after the note, insert:

Note 2: The fault elements for this offence are intention for paragraph (1)(a) and recklessness for paragraphs (1)(b) and (c) (see section 5.6).

[fault elements]

- (98) Schedule 2, item 6, page 53 (line 12), omit the penalty, substitute:

Penalty: Imprisonment for 7 years.

[criminal penalties]

(99) Schedule 2, item 6, page 53 (line 18), omit “or any other”.

[offences by current and former Commonwealth officers etc.]

(100) Schedule 2, item 6, page 53 (before line 22), before the penalty, insert:

Note: The fault elements for this offence are intention for paragraph (2)(a) and recklessness for paragraphs (2)(b) and (c) (see section 5.6).

[fault elements]

(101) Schedule 2, item 6, page 53 (line 22), omit the penalty, substitute:

Penalty: Imprisonment for 3 years.

[criminal penalties]

(102) Schedule 2, item 6, page 54 (line 1), omit “or any other”.

[offences by current and former Commonwealth officers etc.]

(103) Schedule 2, item 6, page 54 (before line 5), before the penalty, insert:

Note: The fault elements for this offence are intention for paragraph (3)(a) and recklessness for paragraphs (3)(b) and (c) (see section 5.6).

[fault elements]

(104) Schedule 2, item 6, page 54 (line 5), omit the penalty, substitute:

Penalty: Imprisonment for 3 years.

[criminal penalties]

(105) Schedule 2, item 6, page 54 (after line 11), after paragraph 122.1(4)(c), insert:

(ca) the failure to comply with the direction results in a risk to the security of the information; and

[failure to comply with direction regarding information]

(106) Schedule 2, item 6, page 54 (line 13), omit “or any other”.

[offences by current and former Commonwealth officers etc.]

(107) Schedule 2, item 6, page 54 (before line 17), before the penalty, insert:

Note: The fault elements for this offence are intention for paragraph (4)(c) and recklessness for paragraphs (4)(a), (b), (ca), (d) and (e) (see section 5.6).

[fault elements]

(108) Schedule 2, item 6, page 54 (line 17), omit the penalty, substitute:

Penalty: Imprisonment for 3 years.

[criminal penalties]

(109) Schedule 2, item 6, page 54 (lines 18 and 19), omit subsection 122.1(5).

[strict liability]

(110) Schedule 2, item 6, page 54 (line 20), omit the heading to section 122.2, substitute:

122.2 Conduct by current and former Commonwealth officers etc. causing harm to Australia's interests

[offences by current and former Commonwealth officers etc.]

(111) Schedule 2, item 6, page 54 (line 29), omit "or any other".

[offences by current and former Commonwealth officers etc.]

(112) Schedule 2, item 6, page 55 (line 4), omit the penalty, substitute:

Penalty: Imprisonment for 7 years.

[criminal penalties]

(113) Schedule 2, item 6, page 55 (line 13), omit "or any other".

[offences by current and former Commonwealth officers etc.]

(114) Schedule 2, item 6, page 55 (line 17), omit the penalty, substitute:

Penalty: Imprisonment for 3 years.

[criminal penalties]

(115) Schedule 2, item 6, page 55 (line 31), omit "or any other".

[offences by current and former Commonwealth officers etc.]

(116) Schedule 2, item 6, page 56 (line 1), omit the penalty, substitute:

Penalty: Imprisonment for 3 years.

[criminal penalties]

(117) Schedule 2, item 6, page 56 (line 13), omit "or any other".

[offences by current and former Commonwealth officers etc.]

(118) Schedule 2, item 6, page 56 (line 17), omit the penalty, substitute:

Penalty: Imprisonment for 3 years.

[criminal penalties]

(119) Schedule 2, item 6, page 56 (lines 24 to 26), omit subparagraph 122.3(1)(b)(i).

[security classification]

(120) Schedule 2, item 6, page 56 (line 28), omit "containing the relevant information".

[security classification]

(121) Schedule 2, item 6, page 57 (line 6), at the end of subparagraph 122.3(1)(b)(v), add "allowing the person to access information that has a security classification of at least secret".

[aggravated offence]

(122) Schedule 2, item 6, page 57 (line 9), omit "15 years—imprisonment for 20", substitute "7 years—imprisonment for 10".

[criminal penalties]

(123) Schedule 2, item 6, page 57 (line 11), omit "5 years—imprisonment for 10", substitute "3 years—imprisonment for 5".

[criminal penalties]

(124) Schedule 2, item 6, page 57 (line 15), omit subsection 122.3(3).

[strict liability]

(125) Schedule 2, item 6, page 57 (lines 23 and 24), omit the heading to section 122.4, substitute:

122.4 Unauthorised disclosure of information by current and former Commonwealth officers etc.

[offences by current and former Commonwealth officers etc.]

(126) Schedule 2, item 6, page 58 (after line 1), at the end of section 122.4, add:

Sunset provision

- (3) This section does not apply in relation to any communication of information that occurs after the end of 5 years after this section commences.

[sunset provision]

(127) Schedule 2, item 6, page 58 (after line 1), after section 122.4, insert:

122.4A Communicating and dealing with information by non-Commonwealth officers etc.

Communication of information

- (1) A person commits an offence if:
- (a) the person communicates information; and
 - (b) the information was not made or obtained by the person by reason of the person being, or having been, a Commonwealth officer or otherwise engaged to perform work for a Commonwealth entity; and
 - (c) the information was made or obtained by another person by reason of that other person being, or having been, a Commonwealth officer or otherwise engaged to perform work for a Commonwealth entity; and
 - (d) any one or more of the following applies:
 - (i) the information has a security classification of secret or top secret;
 - (ii) the communication of the information damages the security or defence of Australia;
 - (iii) the communication of the information interferes with or prejudices the prevention, detection, investigation, prosecution or punishment of a criminal offence against a law of the Commonwealth;
 - (iv) the communication of the information harms or prejudices the health or safety of the Australian public or a section of the Australian public.

Note 1: For exceptions to the offences in this section, see section 122.5.

Note 2: The fault elements for this offence are intention for paragraph (1)(a) and recklessness for paragraphs (1)(b) to (d) (see section 5.6).

Penalty: Imprisonment for 5 years.

Other dealings with information

- (2) A person commits an offence if:
- (a) the person deals with information (other than by communicating it); and

- (b) the information was not made or obtained by the person by reason of the person being, or having been, a Commonwealth officer or otherwise engaged to perform work for a Commonwealth entity; and
- (c) the information was made or obtained by another person by reason of that other person being, or having been, a Commonwealth officer or otherwise engaged to perform work for a Commonwealth entity; and
- (d) any one or more of the following applies:
 - (i) the information has a security classification of secret or top secret;
 - (ii) the dealing with the information damages the security or defence of Australia;
 - (iii) the dealing with the information interferes with or prejudices the prevention, detection, investigation, prosecution or punishment of a criminal offence against of a law of the Commonwealth;
 - (iv) the dealing with the information harms or prejudices the health or safety of the Australian public or a section of the Australian public.

Note: The fault elements for this offence are intention for paragraph (2)(a) and recklessness for paragraphs (2)(b) to (d) (see section 5.6).

Penalty: Imprisonment for 2 years.

Proof of identity not required

- (3) In proceedings for an offence against this section, the prosecution is not required to prove the identity of the other person referred to in paragraph (1)(c) or (2)(c).

[offences by others]

- (128) Schedule 2, item 6, page 58 (line 4), omit “Commonwealth officer”, substitute “public official”.

[defence for public officials]

- (129) Schedule 2, item 6, page 58 (line 8), omit “Commonwealth officer”, substitute “public official”.

[defence for public officials]

- (130) Schedule 2, item 6, page 58 (line 11), omit “dealt with, removed or held”, substitute “communicated, removed, held or otherwise dealt with”.

[application of defences to dealings etc.]

- (131) Schedule 2, item 6, page 58 (lines 15 and 16), omit the note, substitute:

Note: A defendant may bear an evidential burden in relation to the matters in this subsection (see subsection (12) of this section and subsection 13.3(3)).

[burden of proof for integrity agency officials]

- (132) Schedule 2, item 6, page 58 (lines 19 and 20), omit “the information in relation to which the offence is committed is information that”, substitute “the relevant information”.

[application of defences to dealings etc.]

- (133) Schedule 2, item 6, page 58 (lines 25 to 27), omit the heading to subsection 122.5(3), substitute:

Information communicated etc. to integrity agency

[Australian Information Commissioner; application of defences to dealings etc.]

- (134) Schedule 2, item 6, page 58 (lines 29 and 30), omit “relating to the communication of information that the person communicated the information”, substitute “that the person communicated the relevant information, or removed, held or otherwise dealt with the relevant information for the purpose of communicating it”.

[application of defences to dealings etc.]

- (135) Schedule 2, item 6, page 59 (after line 6), after subparagraph 122.5(3)(a)(ii), insert:

(iia) the Australian Information Commissioner, a member of the staff of the Office of the Australian Information Commissioner, or a consultant engaged under the *Australian Information Commissioner Act 2010*;

[Australian Information Commissioner]

- (136) Schedule 2, item 6, page 59 (line 11), after “the Ombudsman”, insert “, the Australian Information Commissioner”.

[Australian Information Commissioner]

- (137) Schedule 2, item 6, page 59 (lines 15 and 16), omit the note, substitute:

Note: A person mentioned in paragraph (3)(a) does not bear an evidential burden in relation to the matters in this subsection (see subsection (12)).

[burden of proof for integrity agency officials]

- (138) Schedule 2, item 6, page 59 (lines 17 to 24), omit subsection 122.5(4), substitute:

Information communicated etc. in accordance with the Public Interest Disclosure Act 2013 or the Freedom of Information Act 1982

- (4) It is a defence to a prosecution for an offence by a person against this Division that the person communicated the relevant information, or removed, held or otherwise dealt with the relevant information for the purpose of communicating it, in accordance with:
- (a) the *Public Interest Disclosure Act 2013*; or
 - (b) the *Freedom of Information Act 1982*.

Note: A defendant may bear an evidential burden in relation to the matters in this subsection (see subsection (12) of this section and subsection 13.3(3)).

Information communicated etc. for the purpose of reporting offences and maladministration

- (4A) It is a defence to a prosecution for an offence by a person against this Division that the person communicated, removed, held or otherwise dealt with the relevant information for the primary purpose of reporting, to an appropriate agency of the Commonwealth, a State or a Territory:
- (a) a criminal offence, or alleged criminal offence, against a law of the Commonwealth; or
 - (b) maladministration relating to the prevention, detection, investigation, prosecution or punishment of a criminal offence against a law of the Commonwealth; or
 - (c) maladministration relating to the performance of functions of the Australian Federal Police under:
 - (i) the *Australian Federal Police Act 1979*; or
 - (ii) the *Proceeds of Crime Act 2002*.

Note: A defendant may bear an evidential burden in relation to the matters in this subsection (see subsection (12) of this section and subsection 13.3(3)).

[application of defences to dealings etc.; freedom of information; reporting maladministration]

(139) Schedule 2, item 6, page 59 (line 25), after “*communicated*”, insert “*etc.*”.

[application of defences to dealings etc.]

(140) Schedule 2, item 6, page 59 (lines 27 and 28), omit “relating to the communication of information that the person communicated the information”, substitute “that the person communicated the relevant information, or removed, held or otherwise dealt with the relevant information for the purpose of communicating it,”.

[application of defences to dealings etc.]

(141) Schedule 2, item 6, page 59 (after line 31), after subsection 122.5(5), insert:

Information communicated etc. for the purposes of obtaining or providing legal advice

(5A) It is a defence to a prosecution for an offence by a person against this Division that the person communicated, removed, held or otherwise dealt with the relevant information for the primary purpose of obtaining or providing, in good faith, legal advice in relation to:

- (a) an offence against this Part; or
- (b) the application of any right, privilege, immunity or defence (whether or not in this Part) in relation to such an offence;

whether that advice was obtained or provided before or after the person engaged in the conduct constituting the offence.

Note: A defendant bears an evidential burden in relation to the matters in this subsection (see subsection 13.3(3)).

[defence in relation to obtaining or providing legal advice]

(142) Schedule 2, item 6, page 60 (lines 1 to 27), omit subsections 122.5(6) and (7), substitute:

Information communicated etc. by persons engaged in business of reporting news etc.

(6) It is a defence to a prosecution for an offence by a person against this Division that the person communicated, removed, held or otherwise dealt with the relevant information in the person’s capacity as a person engaged in the business of reporting news, presenting current affairs or expressing editorial or other content in news media, and:

- (a) at that time, the person reasonably believed that engaging in that conduct was in the public interest (see subsection (7)); or
- (b) the person:
 - (i) was, at that time, a member of the administrative staff of an entity that was engaged in the business of reporting news, presenting current affairs or expressing editorial or other content in news media; and
 - (ii) acted under the direction of a journalist, editor or lawyer who was also a member of the staff of the entity, and who reasonably believed that engaging in that conduct was in the public interest (see subsection (7)).

Note: A defendant bears an evidential burden in relation to the matters in this subsection (see subsection 13.3(3)).

(7) Without limiting paragraph (6)(a) or (b), a person may not reasonably believe that communicating, removing, holding or otherwise dealing with information is in the public interest if:

- (a) engaging in that conduct would be an offence under section 92 of the *Australian Security Intelligence Organisation Act 1979* (publication of identity of ASIO employee or ASIO affiliate); or
- (b) engaging in that conduct would be an offence under section 41 of the *Intelligence Services Act 2001* (publication of identity of staff); or
- (c) engaging in that conduct would be an offence under section 22, 22A or 22B of the *Witness Protection Act 1994* (offences relating to Commonwealth, Territory, State participants or information about the national witness protection program); or
- (d) that conduct was engaged in for the purpose of directly or indirectly assisting a foreign intelligence agency or a foreign military organisation.

[reporting news etc.]

(143) Schedule 2, item 6, page 60 (line 30), omit “relating to the communication of information”.

[application of defences to dealings etc.]

(144) Schedule 2, item 6, page 60 (line 31), omit “the information”, substitute “the relevant information”.

[application of defences to dealings etc.]

(145) Schedule 2, item 6, page 61 (lines 8 and 9), omit “the communication, the person believes that the communication”, substitute “the communication, removal, holding or dealing, the person believes that engaging in that conduct”.

[application of defences to dealings etc.]

(146) Schedule 2, item 6, page 61 (line 17), omit “relating to dealing with information”.

[application of defences to dealings etc.]

(147) Schedule 2, item 6, page 61 (line 18), omit “the information”, substitute “the relevant information”.

[application of defences to dealings etc.]

(148) Schedule 2, item 6, page 61 (line 27), omit “dealing”, substitute “communication, removal, holding or dealing”.

[application of defences to dealings etc.]

(149) Schedule 2, item 6, page 62 (line 1), omit “dealing”, substitute “communication, removal, holding or dealing”.

[application of defences to dealings etc.]

(150) Schedule 2, item 6, page 62 (after line 6), at the end of section 122.5, add:

Removing, holding or otherwise dealing with information for the purposes of communicating information

- (11) For the purposes of subsection (3), (4), (5) or (5A), it is not necessary to prove that information, that was removed, held or otherwise dealt with for the purposes of communicating it, was actually communicated.

Burden of proof for integrity agency officials

- (12) Despite subsection 13.3(3), in a prosecution for an offence against this Division, a person mentioned in subparagraph (3)(a)(i), (ii), (iia) or (iii) does not bear an evidential burden in relation to the matter in:
- (a) subsection (1), (4) or (4A); or
 - (b) either of the following:
 - (i) subparagraph (3)(a)(i), (ii), (iia) or (iii);
 - (ii) paragraph (3)(b), to the extent that that paragraph relates to the Inspector-General of Intelligence and Security, the Ombudsman, the Australian Information Commissioner or the Law Enforcement Integrity Commissioner.

Defences do not limit each other

- (13) No defence in this section limits the operation of any other defence in this section.
[burden of proof for integrity agency officials; application of defences to dealings etc.]

(151) Schedule 2, item 6, page 63 (after line 9), at the end of Division 123, add:

123.4 Effect of this Part on other rights, privileges, immunities or defences

Nothing in this Part limits or affects any other right, privilege, immunity or defence existing apart from this Part.

123.5 Requirements before proceedings can be initiated

- (1) Proceedings for the commitment of a person for trial for an offence against this Part must not be instituted without:
- (a) the written consent of the Attorney-General; and
 - (b) for proceedings that relate to security classified information—a certification by the Attorney-General that, at the time of the conduct that is alleged to constitute the offence, it was appropriate that the information had a security classification.
- (2) However, the following steps may be taken (but no further steps in proceedings may be taken) without consent or certification having been obtained:
- (a) a person may be arrested for the offence and a warrant for such an arrest may be issued and executed;
 - (b) a person may be charged with the offence;
 - (c) a person so charged may be remanded in custody or on bail.
- (3) Nothing in subsection (2) prevents the discharge of the accused if proceedings are not continued within a reasonable time.
- (4) In deciding whether to consent, the Attorney-General must consider whether the conduct might be authorised in a way mentioned in section 122.5.

[effect of Part; certification of information]

(152) Schedule 2, item 11, page 64 (lines 15 to 17), omit the item.

[definition of national security offence]

(153) Schedule 5, item 5, page 75 (lines 2 to 5), omit subparagraph 12(7)(a)(vi), substitute:
(vi) relationships with foreign principals;

[definition of foreign principal; references to persons controlled by foreign principals]

(154) Page 75 (after line 11), at the end of the Bill, add:

Schedule 6—Protection for persons providing information voluntarily to the Inspector-General

Inspector-General of Intelligence and Security Act 1986

1 After section 34A

Insert:

34B Protection for persons providing information voluntarily to the Inspector-General

- (1) This section applies in relation to a person if the person voluntarily provides, or makes available, information or documents to the Inspector-General for any of the following purposes:
- (a) making a complaint under Division 2 of Part II;
 - (b) the Inspector-General conducting an inspection under section 9A;
 - (c) the Inspector-General conducting a preliminary inquiry into a complaint under section 14;
 - (d) the Inspector-General conducting an inquiry under Division 3 of Part II.

Person not liable to penalties under Commonwealth laws

- (2) The person is not (subject to subsection (3)) liable to a penalty under any law of the Commonwealth for providing or making available the information or documents in accordance with subsection (1).

Exceptions

- (3) Subsection (2) does not apply:
- (a) in relation to proceedings for an offence against:
 - (i) section 137.1 or 137.2 (false or misleading information and documents), section 145.1 (using forged document) or 149.1 (obstructing Commonwealth officials) of the *Criminal Code*; or
 - (ii) Division 3 of Part III of the *Crimes Act 1914* (offences relating to evidence and witnesses); or
 - (iii) section 6 of the *Crimes Act 1914*, or section 11.1, 11.4 or 11.5 of the *Criminal Code*, in relation to an offence referred to in subparagraph (i) or (ii); or
 - (b) if the provision:
 - (i) is enacted after the commencement of this section; and
 - (ii) is expressed to have effect despite this section.

[protection for persons providing information voluntarily to the Inspector-General]

ATTACHMENT C

Overview of parliamentary amendments to the National Security Legislation (Espionage and Foreign Interference) Bill 2017

Amendments to secrecy offences

1. The amendments to the secrecy offences in Schedule 2 of the Bill will:
 - narrow the definitions of *inherently harmful information* and *causes harm to Australia's interests*
 - narrow the definition of *security classification* to mean a classification of TOP SECRET or SECRET that is applied in accordance with the policy framework developed by the Commonwealth, or any other equivalent classification or marking prescribed by regulations
 - remove the application of strict liability to the physical element that information has a security classification but apply it to other aspects of the definition of security classification, which are technical matters and not relevant to the defendant's culpability
 - create separate offences that apply to non-Commonwealth officers that are narrower in scope and attract lower penalties than those applying to Commonwealth officers and only apply to the most serious and dangerous conduct
 - reduce the maximum penalties for secrecy offences
 - strengthen the defence for journalists at subsection 122.5(6) by:
 - removing any requirement for journalists to demonstrate that their reporting was 'fair and accurate'
 - ensuring the defence is available where a journalist reasonably believes that their conduct was in the public interest
 - clarifying that the defence is available for editorial and support staff (including editors, lawyers and administrative staff) as well as journalists themselves
 - ensuring the defence is available where administrative support staff are working at the direction of a journalist, editor or lawyer who reasonably believes that conduct was in the public interest
 - broaden defences to cover holding, removing, or otherwise dealing with information (not just communication of information)
 - provide a defence for a person who reports a crime or reports maladministration in relation to a Commonwealth criminal process or the exercise of a Australian Federal Police function
 - provide a defence for communication of, or dealings with, information for the purpose of legal advice

- ensure that integrity agency staff do not bear an evidential burden for defences, given the statutory limitations on their ability to give evidence
- narrow the offences of failing to comply with a direction regarding sensitive information (at subsections 122.1(4) and 122.2(4)) so that they only apply where the failure to comply with a direction results in a risk to security
- require that prior to proceedings being initiated for a secrecy offence:
 - the Attorney-General must consent to a prosecution, including consideration of whether the conduct is covered by a defence
 - if the prosecution relies on the fact that information is security classified—the Attorney-General has certified that it was appropriate for the information to have a security classification
- limit the aggravating factor at subparagraph 122.3(1)(b)(v) to persons holding a security clearance allowing access to information classified as SECRET or above
- apply a sunset period of five years to the offence at subsection 122.4 (unauthorised disclosure of information by current and former Commonwealth officers), and
- require that any material incorporated into regulations to prescribe the meaning of 'proper place of custody' is publicly available.

Amendments to espionage offences

2. The amendments to the espionage offences in Schedule 1 of the Bill will:

- narrow the scope of the espionage offence at section 91.3 to where the person's primary purpose in dealing with the information was to communicate or make it available to a foreign principal
- remove the application of strict liability to the physical element that information has a security classification but apply it to other aspects of the definition of security classification, which are technical matters and not relevant to the defendant's culpability
- create a new defence to some espionage offences that applies where information has previously been published and the person reasonably believed that further publication of the information would not prejudice Australia's national security
- limit the aggravating factor at subparagraph 91.6(1)(b)(v) to persons holding a security clearance allowing access to information classified as SECRET or above
- if the prosecution relies on the fact that information is security classified, require the Attorney-General to certify, prior to proceedings being initiated, that it was appropriate for the information to have a security classification, and

- require that any material incorporated into regulations to prescribe the meaning of 'security classification' is publicly available.

Amendments to foreign interference and sabotage offences

3. The amendments to the foreign interference and sabotage offences in Schedule 1 of the Bill will:

- clarify that the offence of supporting a foreign intelligence agency is limited to material support
- narrow the sabotage offences of introducing a vulnerability to public infrastructure at sections 82.7 and 82.8 to where a person intends or is reckless as to prejudicing national security (but not other types of harm), and
- create a new defence to sabotage offences for private owners or operators of public infrastructure

Amendments to treason, treachery and other threats to security

4. The amendments to the treason, treachery and other related offence in Schedule 1 of the Bill will:

- ensure the good faith defence (at section 80.3 of the Criminal Code) is available for the offence of advocating mutiny at section 83.1
- require the Attorney-General to consider whether conduct might fall within the good faith defence in deciding whether to consent to a prosecution of the offence of advocating mutiny
- provide a defence to the offence of military-style training (at section 83.3) for staff of the United Nations or International Committee of the Red Cross who are engaged in humanitarian activities, and
- reduce the penalty for the offence of interference with political rights and duties (at section 83.4) from 10 years to three years.

Other amendments

5. The amendments will also:

- require the Independent National Security Legislation Monitor to review the new secrecy, espionage, foreign interference and related provisions three years after commencement of those provisions
- carve out the secrecy offences in Division 122 and the offence at section 83.4 (interference with political rights and duties) from the definition of 'national security offence' at section 3 of the *Australian Citizenship Act 2007* so that a person cannot be denied Australian citizenship on the basis that they have committed such an offence
- carve out the offence at section 82.9 (preparing for sabotage offences) from the scope of section 35A of the *Australian Citizenship Act 2007* so that the

Minister cannot revoke a person's citizenship for being convicted of that offence

- include the Division 92 (foreign interference) offences within the scope of section 35A of the *Australian Citizenship Act 2007* so that the Minister can revoke a person's citizenship for being convicted of a foreign interference offence, if other relevant criteria is met
- limit the presumption against bail in section 15AA of the Crimes Act to foreign interference offences where there is death or a substantial risk of death, and
- apply a minimum non-parole period to only the most serious espionage offences (at subsections 91.1(1) and 91.2(1)) rather than all espionage offences.