



Australian Government
Department of Home Affairs



CRITICAL
INFRASTRUCTURE
CENTRE

Intelligence Services Regulations 2020

Explanatory Statement

November 2020

EXPOSURE DRAFT

EXPLANATORY STATEMENT

Intelligence Services Act 2001

Intelligence Services Regulations 2020

The *Intelligence Services Act 2001* (the Act), amongst other functions and purposes, establishes the Australian Signals Directorate (ASD) as a statutory agency (section 27A) and sets out the functions of ASD (section 7). Paragraph 7(1)(f) of the Act specifically provides that it is a function of ASD to cooperate with and assist bodies referred to in section 13A in accordance with that section. Section 13A provides that an agency governed by the Act may cooperate with and assist the bodies listed in subsection 13A(1) in the performance of their functions, subject to any arrangements made or directions given by the responsible Minister for that agency (paragraph 13A(2)(a)) and upon request from the head of the body (paragraph 13A(2)(b)). Paragraph 13A(1)(c) lists a Commonwealth authority, or a State authority, that is prescribed by the regulations for the purpose of that paragraph as a body that an agency may cooperate with and assist.

The purpose of the *Intelligence Services Regulations 2020* (the Regulations) is to prescribe the ‘Home Affairs Department’ for the purpose of paragraph 13A(1)(c) of the Act. ‘Home Affairs Department’ is defined as the Department administered by the Minister administering the *Security of Critical Infrastructure Act 2018* (the SOCI Act). This means that it will be a function of ASD to cooperate with and assist the Department of Home Affairs under paragraph 7(1)(f) of the Act where the Secretary of that Department has requested cooperation and assistance. The prescription of the Home Affairs Department is specifically limited to ASD, and does not apply in relation to other agencies governed by the Act.

These Regulations are intended to enable ASD under paragraph 7(1)(f) of the Act to cooperate with and assist the Home Affairs Department in the exercise of powers and performance of functions under the SOCI Act. This will supplement ASD’s existing capacity to assist the Home Affairs Department (see paragraph 7(1)(e) of the Act in particular).

Details of the Regulations are outlined at Attachment A.

A Statement of Compatibility with Human Rights in accordance with the *Human Rights (Parliamentary Scrutiny) Act 2001* has been prepared at Attachment B. The overall assessment is that the Regulations are compatible with human rights.

The Act does not specify any conditions that need to be met before making the Regulations.

The Regulations are a legislative instrument for the purposes of the *Legislation Act 2003*, and commence the day after registration.

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Details of the *Intelligence Services Regulations 2020*

Section 1 Name

This section provides that the name of the instrument is the *Intelligence Services Regulations 2020* (the Regulations).

Section 2 Commencement

Subsection (1) of this section in effect provides that the Regulations will commence on the day after registration of the instrument on the Federal Register of Legislation. Subsection (2) enables the specific date of commencement to be inserted into the table in subsection (1) after the Regulations are made by the Governor-General.

Section 3 Authority

This section provides that the Regulations are made under the *Intelligence Services Act 2001* (the Act). In this regard it is noted that paragraph 43(a) of the Act provides that the Governor-General may make regulations required or permitted to be prescribed under the Act, and paragraph 13A(1)(c) of the Act permits a Commonwealth authority to be prescribed in regulations for the purpose of that paragraph.

Section 4 Definitions

Under this section:

- *Act* is defined to be the *Intelligence Services Act 2001*, which is the Act under which the Regulations are made.
- *Home Affairs Department* is defined to be the Department administered by the Minister administering the *Security of Critical Infrastructure Act 2018* (the SOCI Act). Under the Administrative Arrangements Orders of 1 February 2020 (C2020Q00003), this is the Department of Home Affairs.

It is also noted that definitions in the Act will also apply in the Regulations (see paragraph 13(1)(b) of the *Legislation Act 2003*). It follows that the meaning of ‘ASD’ in the Regulations is as defined in section 3 of the Act, being the Australian Signals Directorate whose establishment is recognised by section 27A of the Act.

Section 5 Cooperation with other agencies

Subsection (1) of this section provides that, for the purpose of paragraph 13A(1)(c) of the Act, the Home Affairs Department is prescribed. Subsection (2) provides that subsection (1) only applies in relation to ASD. This means that the Home Affairs Department is not prescribed under paragraph 13A(1)(c) of the Act for the purposes of any of the other agencies regulated by the Act.

The effect of this section is that it is a function of ASD under paragraph 7(1)(f) of the Act to cooperate with and assist the Home Affairs Department in accordance with subsection

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13A(2). This means that ASD has the function of cooperating with and assisting the Home Affairs Department subject to any arrangements made or directions given by the Minister for Defence (as the responsible Minister for ASD) and on request from the Secretary of the Home Affairs Department.

The intention of prescribing the Home Affairs Department for this purpose is to enable ASD to assist with the administration of the SOCI Act, including after amendments that may be made to that Act by the Security Legislation Amendment (Critical Infrastructure) Bill 2020.

This section is not intended to restrict or limit any other powers or functions that ASD has to assist the Home Affairs Department under the Act or other legislation (see paragraph 7(1)(e) of the Act in particular).

Statement of Compatibility with Human Rights

Prepared in accordance with Part 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*

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This Disallowable Legislative Instrument is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Overview of the Disallowable Legislative Instrument

The purpose of the *Intelligence Services Regulations 2020* (the Regulations) is to prescribe the ‘Home Affairs Department’ for the purposes of paragraph 13A(1)(c) of the *Intelligence Services Act 2001* (the Act). ‘Home Affairs Department’ is defined to be the Department administered by the Minister administering the *Security of Critical Infrastructure Act 2018* (the SOCI Act). The current Administrative Arrangements Order of 1 February 2020 provides that this is the Department of Home Affairs. The prescription is limited in application to the Australian Signals Directorate (ASD) and does not apply to other agencies governed by the Act.

In effect, prescribing the ‘Home Affairs Department’ for the purpose of paragraph 13A(1)(c) of the Act will specifically provide ASD with the function under paragraph 7(1)(f) of the Act to cooperate with and assist the Department of Home Affairs upon the request of the Secretary of that Department. The intention is for ASD to exercise this function in relation to the Department of Home Affairs’ administration of the SOCI Act, as amended by the Security Legislation Amendment (Critical Infrastructure) Bill 2020 (the Amendment Bill).

Human rights implications

The Regulations do not engage with any human rights. Further information on human rights implications in relation to the Department of Home Affairs’ administration of the SOCI Act as amended by Amendment Bill are set out in the Statement of Compatibility with Human Rights included in the Explanatory Memorandum to the Bill.

Conclusion

The Regulations are compatible with human rights as they do not engage with human rights.