

2016-2017-2018

The Parliament of the
Commonwealth of Australia

HOUSE OF REPRESENTATIVES

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).	No

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

(Government)

(1) 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; or
- (b) any other equivalent classification or marking prescribed by the regulations.

[definition of security classification]

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

[strict liability]

(3) 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 making the information or article available to a foreign principal or a person acting on behalf of a foreign principal; and

[primary purpose of dealing]

- (4) 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]
- (5) Schedule 1, item 17, page 25 (lines 11 to 14), omit subsection 91.3(2), substitute:
- (2) For the purposes of paragraphs (1)(aa) and (b), the person must intend the information or article to be made available to a foreign principal or a person acting on behalf of a foreign principal, even if:
- (a) the person does not have in mind any particular foreign principal; or
- (b) the person has in mind more than one foreign principal.
- [primary purpose of dealing]**
- (6) Schedule 1, item 17, page 25 (line 15), omit subsection 91.3(3).
[strict liability]
- (7) Schedule 1, item 17, page 26 (lines 19 and 20), omit subparagraph 91.6(1)(b)(i).
[security classification]
- (8) Schedule 1, item 17, page 27 (line 4), omit subsection 91.6(3).
[strict liability]
- (9) 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]
- (10) 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]
- (11) Schedule 2, item 6, page 50 (line 26), omit “the public”, substitute “the Australian public”.
[cause harm to Australia's interests]
- (12) Schedule 2, item 6, page 50 (line 27), omit “the public”, substitute “the Australian public”.
[cause harm to Australia's interests]
- (13) Schedule 2, item 6, page 51 (line 4), omit “contract.”, substitute “contract;”.
[reporting news etc.]
- (14) 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.]
- (15) 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]**

- (16) 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 definition of **deal** in that Part, see subsections 90.1(1) and (2).

[definition of deal]

- (17) 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.]

- (18) 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]

- (19) 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]

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

[definition of security classification]

- (21) 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.]

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

[offences by current and former Commonwealth officers etc.]

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

[offences by current and former Commonwealth officers etc.]

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

[offences by current and former Commonwealth officers etc.]

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

[offences by current and former Commonwealth officers etc.]

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

[strict liability]

- (27) 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.]

- (28) Schedule 2, item 6, page 54 (line 29), omit “or any other”.

[offences by current and former Commonwealth officers etc.]

- (29) Schedule 2, item 6, page 55 (line 13), omit “or any other”.

[offences by current and former Commonwealth officers etc.]

- (30) Schedule 2, item 6, page 55 (line 31), omit “or any other”.

[offences by current and former Commonwealth officers etc.]

- (31) Schedule 2, item 6, page 56 (line 13), omit “or any other”.

[offences by current and former Commonwealth officers etc.]

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

[security classification]

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

[strict liability]

- (34) 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.]

- (35) 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: For exceptions to the offences in this section, see section 122.5.

Penalty: Imprisonment for 10 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 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.

Penalty: Imprisonment for 3 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]

- (36) Schedule 2, item 6, page 60 (lines 1 to 10), omit subsection 122.5(6), substitute:

Information dealt with or held by persons engaged in reporting news etc.

- (6) It is a defence to a prosecution for an offence by a person against this Division relating to the dealing with or holding of information that:

- (a) the person dealt with or held the information in the person's capacity as a person engaged in reporting news, presenting current affairs or expressing editorial content in news media; and
- (b) at that time, the person reasonably believed that dealing with or holding the information 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)).

[reporting news etc.]

- (37) Schedule 2, item 6, page 60 (lines 11 and 12), omit "paragraph (6)(a), dealing with or holding information is not", substitute "paragraph (6)(b), a person may not reasonably believe that dealing with or holding information is".

[reporting news etc.]

(38) Schedule 2, item 6, page 60 (lines 25 to 27), omit paragraph 122.5(7)(d), substitute:

(d) either:

- (i) in relation to an offence against subsection 122.4A(1) or (2) that applies because of subparagraph 122.4A(1)(d)(iv) or (2)(d)(iv)—dealing with or holding information that, at that time, will or is likely to result in the death of, or serious harm to, a person; or
- (ii) otherwise—dealing with or holding information that, at that time, will or is likely to harm or prejudice the health or safety of the Australian public or a section of the Australian public;

[reporting news etc.]

(39) Schedule 2, item 6, page 60 (after line 27), at the end of subsection 122.5(7), add:

(e) dealing with or holding information for the purpose of directly or indirectly assisting a foreign intelligence agency or a foreign military organisation.

[reporting news etc.]