



**Australian Government**

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**Department of the  
Prime Minister and Cabinet**

## **Joint Submission to the Parliamentary Joint Committee on Intelligence and Security**

- Department of the Prime Minister and Cabinet
- Department of Home Affairs
- Attorney-General's Department

## **Home Affairs and Integrity Agencies Legislation Amendment Bill 2017**

January 2018

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## Introduction

1. The Department of the Prime Minister and Cabinet (PM&C), the Department of Home Affairs and the Attorney-General's Department welcome the opportunity to provide a joint submission to the Parliamentary Joint Committee on Intelligence and Security as part of the Committee's consideration of the Home Affairs and Integrity Agencies Legislation Amendment Bill 2017 (the Bill).
2. The Bill was introduced into Parliament by the Prime Minister, the Hon Malcolm Turnbull MP, on 7 December 2017, and referred to the Committee on 8 December 2017. Detailed information on the specific provisions in the Bill is included in the Explanatory Memorandum to the Bill. This submission provides additional background information in relation to the Bill.

## Background

3. On 18 July 2017 the Prime Minister announced the most significant reorganisation of Australia's national security arrangements in decades, including the establishment of a new Home Affairs portfolio (the Portfolio) and a strengthened role for the Attorney-General in overseeing intelligence, security and law enforcement agencies. The Bill is consistent with this announcement. A copy of the Prime Minister's media release of 18 July 2017 is at **Attachment A**.
4. The establishment of the Portfolio and strengthening of the Attorney-General's role will complement changes to the Australian Intelligence Community flowing from the 2017 Independent Intelligence Review, including the establishment of the Office of National Intelligence and the transformation of the Australian Signals Directorate (ASD) into a statutory agency within the Defence portfolio.
5. These significant reforms will result in better integrated intelligence and domestic security arrangements and strengthen Australia's ability to deal with an increasingly complex security environment, evolving threats from terrorism and organised crime, and the development of new and emerging technologies.
6. The majority of the machinery of government changes have been given effect through amendments to the Administrative Arrangements Order (AAO) (**Attachment B**) and the resulting effect of section 19(1) of the *Acts Interpretation Act 1901* (Acts Interpretation Act) combined with the making of the *Acts Interpretation Amendment (Home Affairs) Substituted Reference Order 2017* (SRO) (**Attachment C**).
7. The Bill is necessary to give effect to other aspects of the changes which could not be achieved through those mechanisms. The focus of the Bill is overwhelmingly on enhancing accountability. The amendments enshrine a significant oversight role for the Attorney-General in key legislation governing our security and intelligence agencies. In particular, measures in the Bill clarify and facilitate the Attorney-General's ongoing role in relation to warrants and Ministerial authorisations.
8. The Bill also clarifies the Attorney-General's new role in administering legislation governing the Inspector-General of Intelligence and Security (IGIS) and the Independent National Security Legislation Monitor (INSLM) while ensuring the Prime Minister retains appropriate powers and functions in respect of these independent offices. In doing so, the Bill would formalise the Attorney-General's important role, as First Law Officer, in maintaining legal and integrity oversight, and the appointment of key integrity office holders.
9. Further legislative changes required to implement the recommendations of the 2017 Independent Intelligence Review will be brought forward separately by the Government in 2018.

## Home Affairs Portfolio

10. The Portfolio, established on 20 December 2017, is designed as a federated system, broadly modelled on the United Kingdom's Home Office arrangements. It brings together Australia's federal law enforcement, national and transport security, criminal justice, emergency management, multicultural affairs and immigration and border-related functions and agencies. The Portfolio includes the Australian Border Force, the Australian Criminal Intelligence Commission, the Australian Federal Police and the Australian Transaction Reports and Analysis Centre. It will also include the Australian Security Intelligence Organisation (ASIO).
11. The Portfolio is supported by a central policy agency, the new Department of Home Affairs. The Department was formed by merging the former Department of Immigration and Border Protection with national security, emergency management and criminal justice functions from the Attorney-General's Department; the Office of Transport Security from the Department of Infrastructure and Regional Development; multicultural affairs from the Department of Social Services; and the counter-terrorism coordination and cyber security policy functions from PM&C.

## Enhanced Role of the Attorney-General

12. It is critical that significant reforms of this nature are balanced with a strong accountability and oversight framework to give the public confidence that Australia's security and law enforcement agencies not only safeguard our nation's security, but do so while respecting the rights and liberties of all Australians.
13. The changes relating to the Portfolio will be complemented by changes to strengthen the Attorney-General's role in integrity and oversight which will reinforce the Attorney-General's responsibilities as the Commonwealth's First Law Officer, including protecting the rule of law in Australia, and playing a key role in contributing to the development of legislation across all portfolios.
14. The Bill will enable the Attorney-General's ongoing role in issuing ASIO warrants, authorising special intelligence operations and giving agreement to security-related Ministerial authorisations under the *Intelligence Services Act 2001* (IS Act).
15. In addition, under the new arrangements, the Attorney-General's portfolio will incorporate the IGIS, the INSLM and the Commonwealth Ombudsman. This is in addition to existing responsibility for the Australian Commission for Law Enforcement Integrity (ACLEI). The Attorney-General will also assume responsibility for the *Public Interest Disclosure Act 2013*.
16. The Attorney-General's ongoing responsibilities will include administration of the Commonwealth criminal justice system, broadly from the point a criminal prosecution commences in the court system and include evidence, sentencing and parole. This will complement the role of the Minister for Home Affairs in the steps leading up to a prosecution such as the development of policy and management of operational matters, including investigations.
17. The Attorney-General will also retain responsibility for key functions to support the effective administration of justice – including formal international crime cooperation mechanisms – to ensure offenders cannot seek safe haven from justice, and authorities have the evidence they need for an effective prosecution.

## Implementation of changes

18. PM&C has led a multi-agency Home Affairs Taskforce (the Taskforce) since July 2017 to advise the Prime Minister on Machinery of Government requirements including legal, policy and governance issues. The Taskforce also led the development of the Bill, with support from all affected departments and agencies.
19. The work of the Taskforce has proceeded in parallel with the work of a joint-agency Home Affairs Implementation Team on enterprise level issues, led by the then Department of Immigration and Border Protection.
20. The changes are being undertaken in a phased manner.

### **Phase One**

21. Phase One commenced on 20 December 2017 when the Portfolio was established and the Hon Peter Dutton MP was sworn in as the Minister for Home Affairs and the Minister for Immigration and Border Protection. Outside of Cabinet Minister Dutton will be supported by two other portfolio Ministers, the Hon Angus Taylor MP as Minister for Law Enforcement and Cybersecurity and the Hon Alan Tudge MP as Minister for Citizenship and Multicultural Affairs. The Hon Alex Hawke MP will support Minister Dutton as the Assistant Minister for Home Affairs.
22. The transfer of functions and agencies to the Portfolio in Phase One was largely achieved through an amendment to the AAO signed by the Governor-General on 20 December 2017. The name of the Department of Immigration and Border Protection was changed to the Department of Home Affairs, and the AAO was amended transferring a number of functions from the Attorney-General's, Infrastructure and Regional Development, Prime Minister's and Social Services portfolios into the Portfolio. The AAO amendment which commenced on 20 December 2017 is at **Attachment B**.
23. The AAO amendment was supplemented by the SRO which commenced on 21 December 2017 and substitutes ministerial, secretarial and departmental references in 28 Acts and legislative instruments. The SRO is at **Attachment C**. Amendments to relevant legislation to reflect the SRO will be made in due course, as is the usual practice.
24. In addition to the SRO, the Attorney-General has signed an authorisation to enable the Home Affairs Ministers to exercise relevant powers and functions under the terrorism provisions in Part 5.3 of the *Criminal Code Act 1995* (Criminal Code). This approach was necessary because of complexities associated with the reference from the States of Constitutional powers which underpins Part 5.3 of the Criminal Code. Amendments to Part 5.3 to reflect these arrangements will be brought forward in due course.

### **Phase Two**

25. Phase Two will occur following the passage of the Bill. This will include the transfer of responsibility for ASIO and associated functions (including responsibility for the *Telecommunications (Interception and Access) Act 1979* (TIA Act) and the *Surveillance Devices Act 2004*) to the Minister for Home Affairs. It will also include the transfer of responsibility for the IGIS, INSLM and the Commonwealth Ombudsman to the Attorney-General's portfolio.
26. These transfers will be given effect through a further amendment to the AAO and a further SRO. The SRO in particular will provide for a number of substituted references in the *Australian Security Intelligence Organisation Act 1979* (ASIO Act) and the TIA Act to facilitate the Attorney-General's continued role including in relation to the issuing of ASIO warrants.

## Specific measures in the Bill

27. The Bill includes proposed amendments to the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* (AML/CTF Act) and the IS Act to facilitate the Attorney-General's enhanced oversight and accountability role in relation to intelligence agencies.
28. It also includes proposed amendments to the *Independent National Security Legislation Monitor Act 2010* (INSLM Act) and the *Inspector-General of Intelligence and Security Act 1986* (IGIS Act) associated with the transfer of responsibility for those Acts to the Attorney-General from the Prime Minister.

### Anti-Money Laundering and Counter-Terrorism Financing Act 2006

29. The amendments to the AML/CTF Act will support the Attorney-General's ongoing oversight and accountability role by ensuring that ASIO and other intelligence agencies can continue to disclose sensitive financial information to the Attorney-General in connection with his or her performance of the following functions after Phase Two:
  - issuing warrants under the TIA Act and the ASIO Act;
  - authorising special intelligence operations under the ASIO Act; and
  - giving agreement to security-related Ministerial authorisations under the IS Act.
30. The AML/CTF Act currently enables officials to disclose information to the Minister responsible for ASIO and the Minister responsible for the TIA Act. Following the introduction of the Phase Two changes, the Minister for Home Affairs will be responsible for both the ASIO and TIA Acts. In the absence of these amendments, intelligence agencies could be unable to disclose sensitive financial information to the Attorney-General in support of relevant applications.
31. It will remain the case that information can only be disclosed to the Attorney-General in very limited circumstances, related to his or her ongoing functions. There are strong safeguards in the AML/CTF Act to ensure information is only disclosed in appropriate circumstances.

### Intelligence Services Act 2001

32. Amendments to the IS Act are required to provide for the Attorney-General's ongoing involvement in the giving of Ministerial authorisations for the production of intelligence on Australian persons by the Australian Secret Intelligence Service (ASIS), ASD and Australian Geospatial-Intelligence Organisation (AGO) in cases involving a threat to security, following the transfer of responsibility for the ASIO Act to the Minister for Home Affairs in Phase Two.
33. Section 3A of the IS Act makes specific provision for how references to Ministers should be read. There is a risk that this section would displace the operation of section 19B of the Acts Interpretation Act, under which substituted reference orders are made. Accordingly, legislative amendments avoid any risk that substituted reference orders would be ineffective.
34. Amendments to the IS Act are also proposed to reflect the Attorney-General's enhanced oversight and integrity role. This includes a requirement for the Attorney-General to be consulted prior to the making of any guidelines by the ASIO and ASIS Ministers under section 13G of that Act. These guidelines apply to the undertaking of certain types of activities by ASIS in support of ASIO that would normally require Ministerial authorisation. This will ensure that appropriate consideration is given to the protection of the interests of Australian persons in the development of such guidelines.
35. The Attorney-General (in addition to the Ministers responsible for intelligence agencies) will also have the ability to refer matters to the Parliamentary Joint Committee on Intelligence and Security.

36. Amendments to the IS Act are also proposed to reflect that the Minister for Home Affairs is responsible for national security, specifically:
- the addition of the Minister responsible for the ASIO Act to the list of ministers who can give an oral authorisation in an emergency situation (in addition to the Prime Minister, the Minister for Defence, Minister for Foreign Affairs and Attorney-General); and
  - requiring the head of ASIS, AGO and ASD to notify the Minister responsible for the ASIO Act (as well as the Attorney-General) when an emergency authorisation has been given in certain circumstances.

#### Independent National Security Legislation Monitor Act 2010

37. Amendments to the INSLM Act will facilitate the transfer of responsibility for the INSLM to the Attorney-General's portfolio. In particular, the amendments:
- clarify that responsibilities under the INSLM Act transfer to the Minister administering the Act, being the Attorney-General;
  - ensure that the Prime Minister, in addition to the Attorney-General, may continue to refer matters relating to counter-terrorism or national security to the INSLM and receive relevant reports; and
  - preserve the role of the Prime Minister in the appointment of the INSLM, by re-enacting subsection 11(2) of the INSLM Act to ensure that the reference to the Prime Minister in that provision is not read as a reference to the Minister administering the INSLM Act (the Attorney-General) due to the operation of subsection 19(1) of the Acts Interpretation Act.
38. It is appropriate the Prime Minister (as Chair of the National Security Committee of Cabinet and lead Minister responsible for the National Intelligence Community and whole-of-government national security and intelligence policy coordination) continues to have the power to refer a matter to the Monitor, in addition to the Minister responsible for administering the INSLM Act.
39. The INSLM is independent in how he or she conducts inquiries and the conclusions reached. The amendments in the Bill do not impact on the INSLM's independence from the Government.

#### Inspector-General of Intelligence and Security Act 1986

40. Amendments to the IGIS Act facilitate the transfer of responsibility for the IGIS to the Attorney-General's portfolio. In particular, the amendments will:
- clarify that responsibilities under the IGIS Act transfer to the Minister administering the Act (the Attorney-General);
  - enable the Minister administering the IGIS Act (in addition to the Minister responsible for each intelligence agency) to request that the IGIS inquire into a matter and receive relevant reports;
  - enable the Prime Minister to continue to direct the IGIS to inquire into a matter, and receive relevant reports; and
  - preserve the role of the Prime Minister in the appointment of the IGIS, by re-enacting subsection 6(3) of the IGIS Act to ensure that the reference to the Prime Minister in that provision is not read as a reference to the Minister administering the IGIS Act due to the operation of subsection 19(1) of the Acts Interpretation Act.
41. It is appropriate the Prime Minister (as Chair of the National Security Committee of Cabinet and lead Minister responsible for the National Intelligence Community and whole-of-government national security and intelligence policy coordination) continues to have the power to request that the IGIS inquire into a matter, in addition to the Minister responsible for administering the IGIS Act (the Attorney-General), given his/her role as First Law Officer and the Minister responsible for the oversight of Australia's intelligence and security agencies.

42. The IGIS is independent in how he or she conducts inquiries and the conclusions reached. The amendments in the Bill do not impact on the IGIS's independence from the Government.



## Attachment A

### **PRIME MINISTER'S MEDIA STATEMENT – 18 JULY 2017**

## A STRONG AND SECURE AUSTRALIA

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### *MEDIA RELEASE*

18 Jul 2017

*Prime Minister, Attorney-General, Minister for Immigration and Border Protection, Minister for Justice  
Defence and National Security*

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The Turnbull Government will undertake the most significant reform of Australia's national intelligence and domestic security arrangements in more than 40 years.

The reforms will restructure and strengthen Australia's Intelligence Community, establish a Home Affairs portfolio and enhance the Attorney-General's oversight of Australia's intelligence, security and law enforcement agencies.

Australia faces an increasingly complex security environment, evolving threats from terrorism and organised crime, and the development of new and emerging technologies, including encryption.

In view of these developments, the Prime Minister announced a review of Australia's Intelligence Community last year.

Mr Michael L'Estrange and Mr Stephen Merchant, and their adviser, Sir Iain Lobban, have finalised their report to Government. We thank them for their thorough and ground-breaking work.

The review concluded that Australia's intelligence agencies are highly capable and staffed by skilled officers. It also made many important recommendations to transform these agencies into a world-class intelligence community.

The review highlighted how changing security threats and technologies are driving the need for closer cooperation between our domestic security and law enforcement agencies.

For over a decade, successive Governments have responded to worsening security trends with ad hoc arrangements to strengthen coordination and cooperation between Australia's intelligence, security and law enforcement agencies.

These arrangements have been highly effective. Intelligence and law enforcement agencies have successfully interdicted 12 imminent terrorist attacks since September 2014. Operation Sovereign Borders, has also prevented successful people smuggling ventures for nearly three years.

However, the Government believes that the evolving and complex threats to Australia's security require more enduring and better integrated intelligence and domestic security arrangements.

We have accepted the recommendations of the Australian Intelligence Community review as a sound basis to reform Australia's intelligence arrangements.

The Government will establish an Office of National Intelligence, headed by a Director-General of National Intelligence, and transform the Australian Signals Directorate into a statutory agency within the Defence portfolio.

The Government will also establish a Home Affairs portfolio of immigration, border protection and domestic security and law enforcement agencies.

The new Home Affairs portfolio will be similar to the Home Office of the United Kingdom: a central department providing strategic planning, coordination and other support to a 'federation' of independent security and law enforcement agencies including the Australian Security Intelligence Organisation, the Australian Federal Police, the Australian Border Force and the Australian Criminal Intelligence Commission.

These arrangements will preserve the operational focus and strengths of frontline agencies engaged in the fight against terrorism, organised crime and other domestic threats.

In view of these significant reforms, the Government will also strengthen the Attorney-General's oversight of Australia's intelligence community and the agencies in the Home Affairs portfolio.

Strong oversight and accountability is important to give the public confidence that our agencies not only safeguard our nation's security, but do so respecting the rights and liberties of all Australians.

The Attorney-General will continue to be the issuer of warrants under the ASIO Act, and Ministerial Authorisations under the Intelligence Services Act and will continue to administer the Criminal Code Act 1995 and the Crimes Act 1914.

The Attorney-General's portfolio will incorporate the Inspector-General of Intelligence and Security and the Independent National Security Legislation Monitor. The Government will also consider measures to strengthen the operation of both roles.

In addition, the Attorney-General's portfolio will house the Commonwealth Ombudsman, which will remain an independent statutory body.

These reforms are significant and complex; they will take time to fully implement.

Planning to implement the changes to the Australian Intelligence Community, the establishment of the Home Affairs portfolio and the strengthening of the Attorney-General's portfolio will be undertaken within the Department of the Prime Minister and Cabinet.

The Attorney-General, the Minister for Immigration and Border Protection as Minister-designate for Home Affairs, and the Minister for Justice will work with the Department of the Prime Minister and Cabinet to develop these plans with a view to their implementation from early 2018.

These reforms are driven by serious threats to Australia's security and the Government's determination to keep Australians safe and secure.

They will complement work underway to implement the Government's 2016 Defence White Paper, including investments in new combat capability for the Australian Defence Force.

The Government will also present a Foreign Policy White Paper later this year.

## Attachment B

### **ADMINISTRATIVE ARRANGMENTS ORDER (AAO) AMENDMENT – 20 DECEMBER 2017**

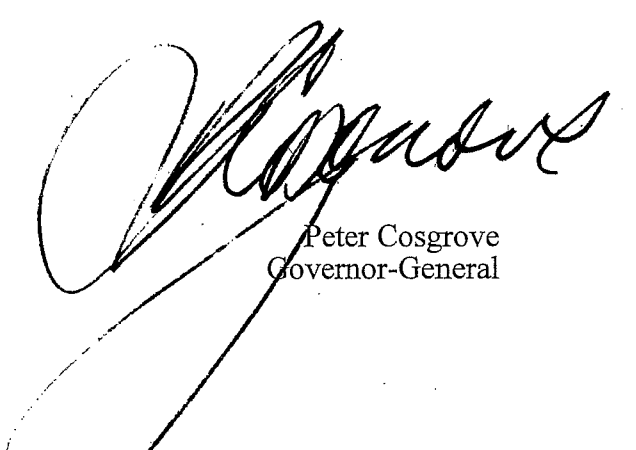
**COMMONWEALTH OF AUSTRALIA**

*The Constitution*

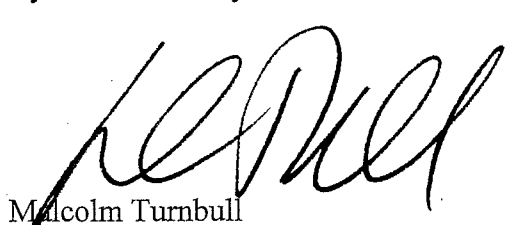
**Administrative Arrangements Order**

I, General the Honourable Sir Peter Cosgrove AK MC (Ret'd), Governor-General of the Commonwealth of Australia, acting with the advice of the Federal Executive Council and under Chapter II of the *Constitution*, order that the Administrative Arrangements Order made on 1 September 2016 and amended on 27 October 2016, 13 April 2017 and 30 November 2017, be amended as set out in the Schedule.

Signed and sealed with the  
Great Seal of Australia on  
20th December 2017

  
Peter Cosgrove  
Governor-General

By His Excellency's Command

  
Malcolm Turnbull  
Prime Minister

## SCHEDULE


### AMENDMENTS TO THE ADMINISTRATIVE ARRANGEMENTS ORDER

#### PART 2 THE ATTORNEY-GENERAL'S DEPARTMENT

##### *Matters dealt with by the Department*

- Omit: Criminal law and law enforcement
- Substitute: Administration of criminal justice, including -  
criminal law policy and principles of criminal responsibility  
matters relating to prosecution  
sentencing and management of federal offenders  
international crime co-operation, including extradition and mutual  
assistance in criminal matters
- Add: Fraud and anti-corruption policy
- Omit: National security, protective security policy and co-ordination
- Substitute: Protective security policy
- Omit: Protective services at Commonwealth establishments and diplomatic  
and consular premises in Australia
- Omit: Commonwealth emergency management
- Omit: Natural disaster relief, recovery and mitigation policy and financial  
assistance including payments to the States and Territories and the  
Australian Government Disaster Recovery Payment
- Omit: Critical infrastructure protection co-ordination

##### *Legislation administered by the Minister*

- Omit: *Anti-Money Laundering and Counter-Terrorism Financing Act 2006*
- Omit: *AusCheck Act 2007*
- Omit: *Australian Crime Commission Act 2002*
- Substitute: *Australian Crime Commission Act 2002, section 27*
- Omit: *Australian Crime Commission Establishment Act 2002*
- Omit: *Australian Crime Commission (National Policing Information  
Charges) Act 2016*
- Omit: *Australian Federal Police Act 1979*
- 

- Omit: *Australian Transaction Reports and Analysis Centre Industry Contribution Act 2011*
- Omit: *Australian Transaction Reports and Analysis Centre Industry Contribution (Collection) Act 2011*
- Omit: *Counter-Terrorism Legislation Amendment (Foreign Fighters) Act 2014*
- Omit: *Crimes Act 1914*
- Substitute: *Crimes Act 1914, except to the extent administered by the Minister for Home Affairs*
- Omit: *Crimes (Aviation) Act 1991*
- Omit: *Criminology Research Act 1971*
- Omit: *Financial Transaction Reports Act 1988*
- Omit: *Law Enforcement (AFP Professional Standards and Related Matters) Act 2006*
- Omit: *National Crime Authority (Status and Rights of Former Chairman) Act 1984*
- Omit: *Proceeds of Crime Act 1987*
- Substitute: *Proceeds of Crime Act 1987, section 102*
- Omit: *Proceeds of Crime Act 2002*
- Omit: *Proceeds of Crime (Consequential Amendments and Transitional Provisions) Act 2002*
- Omit: *Public Order (Protection of Persons and Property) Act 1971*
- Omit: *Social Security Act 1991, insofar as it relates to Australian Government Disaster Recovery Payment, Disaster Recovery Allowance and the Australian Victim of Terrorism Overseas Payment*
- Omit: *Social Security (Administration) Act 1999, insofar as it relates to Australian Government Disaster Recovery Payment, Disaster Recovery Allowance and the Australian Victim of Terrorism Overseas Payment*
- Omit: *Witness Protection Act 1994*

## **PART 6 THE DEPARTMENT OF EMPLOYMENT**

Omit the heading and substitute:

## **PART 6 THE DEPARTMENT OF JOBS AND SMALL BUSINESS (Part of the Jobs and Innovation Portfolio)**

### *Matters dealt with by the Department*

- Add: Reducing the burden of government regulation





Add: Small business policy and programmes

**PART 11 THE DEPARTMENT OF HUMAN SERVICES**  
**(Part of the Social Services Portfolio)**

Omit the heading and substitute:

**PART 11 THE DEPARTMENT OF HUMAN SERVICES**

**PART 12 THE DEPARTMENT OF IMMIGRATION AND BORDER PROTECTION**

Omit the heading and substitute:

**PART 12 THE DEPARTMENT OF HOME AFFAIRS**

*Matters dealt with by the Department*

Add: National security policy and operations

Add: Law enforcement policy and operations

Omit: Entry, stay and departure arrangements for non-citizens

Omit: Border immigration control

Substitute: Immigration and migration, including -  
border security  
entry, stay and departure arrangements for non-citizens  
customs and border control other than quarantine and inspection

Add: Multicultural affairs

Omit: Customs and border control other than quarantine and inspection

Add: Transport security

Add: Cyber policy co-ordination

Add: Protective services at Commonwealth establishments and diplomatic  
and consular premises in Australia

Add: Critical infrastructure protection co-ordination

Add: Commonwealth emergency management

Add: Natural disaster relief, recovery and mitigation policy and financial  
assistance including payments to the States and Territories and the  
Australian Government Disaster Recovery Payment

*Legislation administered by the Minister*

Add: *Anti-Money Laundering and Counter-Terrorism Financing Act 2006*

Add: *AusCheck Act 2007*

Add: *Australian Crime Commission Act 2002*, except to the extent  
administered by the Attorney-General

- Add: *Australian Crime Commission Establishment Act 2002*
- Add: *Australian Crime Commission (National Policing Information Charges) Act 2016*
- Add: *Australian Federal Police Act 1979*
- Add: *Australian Transaction Reports and Analysis Centre Industry Contribution Act 2011*
- Add: *Australian Transaction Reports and Analysis Centre Industry Contribution (Collection) Act 2011*
- Add: *Aviation Transport Security Act 2004*
- Add: *Crimes Act 1914, Parts IAA, IAAA, IAAB, IAB, IAC, IC, ID, and IE*
- Add: *Crimes (Aviation) Act 1991*
- Add: *Criminology Research Act 1971*
- Add: *Financial Transaction Reports Act 1988*
- Add: *Inspector of Transport Security Act 2006*
- Add: *Law Enforcement (AFP Professional Standards and Related Matters) Act 2006*
- Add: *Maritime Transport and Offshore Facilities Security Act 2003*
- Add: *National Crime Authority (Status and Rights of Former Chairman) Act 1984*
- Add: *Proceeds of Crime Act 1987, except to the extent administered by the Attorney-General*
- Add: *Proceeds of Crime Act 2002*
- Add: *Proceeds of Crime (Consequential Amendments and Transitional Provisions) Act 2002*
- Add: *Public Order (Protection of Persons and Property) Act 1971*
- Add: *Social Security Act 1991, insofar as it relates to Australian Government Disaster Recovery Payment, Disaster Recovery Allowance and the Australian Victim of Terrorism Overseas Payment*
- Add: *Social Security (Administration) Act 1999, insofar as it relates to Australian Government Disaster Recovery Payment, Disaster Recovery Allowance and the Australian Victim of Terrorism Overseas Payment*
- Add: *Witness Protection Act 1994*



**PART 13 THE DEPARTMENT OF INDUSTRY, INNOVATION AND SCIENCE**

Omit the heading and substitute:

**PART 13 THE DEPARTMENT OF INDUSTRY, INNOVATION AND SCIENCE  
(Part of the Jobs and Innovation Portfolio)**

**PART 14 THE DEPARTMENT OF INFRASTRUCTURE AND REGIONAL  
DEVELOPMENT**

Omit the heading and substitute:

**PART 14 THE DEPARTMENT OF INFRASTRUCTURE, REGIONAL  
DEVELOPMENT AND CITIES**

*Matters dealt with by the Department*

- Omit: Transport security
- Add: National policy on cities
- Add: Infrastructure and project financing
- Add: Population policy

*Legislation administered by the Minister*

- Omit: *Aviation Transport Security Act 2004*
- Omit: *Inspector of Transport Security Act 2006*
- Omit: *Maritime Transport and Offshore Facilities Security Act 2003*

**PART 15 THE DEPARTMENT OF THE PRIME MINISTER AND CABINET**

*Matters dealt with by the Department*

- Omit: National security policy co-ordination
- Substitute: Whole of government national security and intelligence policy co-ordination
- Omit: Counter terrorism policy co-ordination
- Omit: Cyber policy co-ordination
- Omit: Reducing the burden of government regulation
- Omit: National policy on cities
- Omit: Population policy
- Omit: Infrastructure and project financing



## **PART 16 THE DEPARTMENT OF SOCIAL SERVICES**

### ***Matters dealt with by the Department***

Omit: Multicultural affairs

### ***Legislation administered by the Minister***

Omit: *Social Security Act 1991*, except to the extent administered by the Attorney-General or the Minister for Employment

Substitute: *Social Security Act 1991*, except to the extent administered by the Minister for Home Affairs or the Minister for Employment

Omit: *Social Security (Administration) Act 1999*, except to the extent administered by the Attorney-General or the Minister for Employment

Substitute: *Social Security (Administration) Act 1999*, except to the extent administered by the Minister for Home Affairs or the Minister for Employment

## **PART 17 THE DEPARTMENT OF THE TREASURY**

### ***Matters dealt with by the Department***

Omit: Small business policy and programmes



## Attachment C

**SUBSTITUTED REFERENCE ORDER – MADE 20 DECEMEBR 2017, COMMENCED 21 DECEMBER 2017**



## **Acts Interpretation Amendment (Home Affairs) Substituted Reference Order 2017**

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I, General the Honourable Sir Peter Cosgrove AK MC (Ret'd), Governor-General of the Commonwealth of Australia, acting with the advice of the Federal Executive Council, make the following substituted reference order.

Dated 20 December 2017

Peter Cosgrove  
Governor-General

By His Excellency's Command

Christian Porter  
Attorney-General

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## Contents

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## 1 Name

This instrument is the *Acts Interpretation Amendment (Home Affairs) Substituted Reference Order 2017*.

## 2 Commencement

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

Commencement information		
Column 1	Column 2	Column 3
Provisions	Commencement	Date/Details
1. The whole of this instrument	The day after this instrument is registered.	21 December 2017

Note: This table relates only to the provisions of this instrument as originally made. It will not be amended to deal with any later amendments of this instrument.

- (2) Any information in column 3 of the table is not part of this instrument. Information may be inserted in this column, or information in it may be edited, in any published version of this instrument.

## 3 Authority

This instrument is made under section 19B of the *Acts Interpretation Act 1901*.

## 4 Schedules

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

## Schedule 1—Amendments

### *Acts Interpretation Substituted Reference Order 2017*

#### 1 Section 1.5

Insert:

*Home Affairs transition day* means the day after the commencement of the amendments to the Administrative Arrangements Order which transfer the administration of the *Australian Federal Police Act 1979* from the Attorney-General to the Minister for Home Affairs.

#### 2 At the end of Part 2

Add:

#### 2.4 Substitutions made on the Home Affairs transition day

- (1) The following table sets out substitutions made on the Home Affairs transition day that affect provisions of multiple Acts or instruments that refer to Ministers.

Substitutions made on the Home Affairs transition day—references to Ministers in multiple Acts or instruments		
Column 1 Affected provisions	Column 2 Existing reference	Column 3 Substitute reference
1 All provisions	Minister for Immigration and Border Protection	Minister for Home Affairs

- (2) The following table sets out substitutions made on the Home Affairs transition day that affect provisions of a single Act or instrument that refer to Ministers.

Substitutions made on the Home Affairs transition day—references to Ministers in a single Act or instrument		
Column 1 Affected provisions	Column 2 Existing reference	Column 3 Substitute reference
1 <i>Administrative Decisions (Judicial Review) Act 1977</i> , paragraphs (daa) and (daaa) of Schedule 1	Attorney-General	Minister for Home Affairs
2 <i>A New Tax System (Family Assistance) Act 1999</i> , Division 7 of Part 3	Attorney-General	Minister for Home Affairs
3 <i>Anti-Money Laundering and Counter-Terrorism Financing Act 2006</i> , section 5 (definition of <i>Attorney-General's Department</i> )	Attorney-General, if the reference to that authority would, apart from this item, be read as a reference to another Minister in accordance with section 19 of the <i>Acts Interpretation Act 1901</i>	Attorney-General

<b>Substitutions made on the Home Affairs transition day—references to Ministers in a single Act or instrument</b>			
	<b>Column 1 Affected provisions</b>	<b>Column 2 Existing reference</b>	<b>Column 3 Substitute reference</b>
4	<i>Australian Citizenship Act 2007</i> , section 6A	Attorney-General	Minister for Home Affairs
5	<i>Australian Crime Commission Act 2002</i> , subsections 12(1) and (1A) and section 16	Attorney-General of the Commonwealth, if the reference to that authority would, apart from this item, be read as a reference to another Minister in accordance with section 19 of the <i>Acts Interpretation Act 1901</i>	Attorney-General of the Commonwealth
6	<i>Australian Federal Police Act 1979</i> , sections 44, 47B, 49P and 51	the Minister	Attorney-General
7	<i>Crimes Act 1914</i> , sections 3ZZAE, 3ZZAF, 15GG and 15LD	the Minister	Attorney-General
8	<i>Crimes Act 1914</i> , section 9A	Attorney-General	Minister for Home Affairs
9	<i>Crimes Act 1914</i> , Part ID	Attorney-General, if the reference to that authority would, apart from this item, be read as a reference to another Minister in accordance with section 19 of the <i>Acts Interpretation Act 1901</i>	Attorney-General
10	<i>Crimes (Aviation) Act 1991</i> , sections 37, 41 and 48	Attorney-General, if the reference to that authority would, apart from this item, be read as a reference to another Minister in accordance with section 19 of the <i>Acts Interpretation Act 1901</i>	Attorney-General
11	<i>Criminal Code</i> : (a) section 72.28; (b) section 72.36, paragraph (a) of the definition of <b>responsible Minister</b> ; (c) subsection 117.1(2); (d) section 119.8; (e) Part 9.1; (f) paragraphs 471.18(2)(d), 471.21(2)(d), 474.21(2)(d) and 474.24(2)(d)	the Minister	Minister for Home Affairs
12	<i>Criminology Research Act 1971</i> , subsection 19(2)	Attorney-General	Minister administering the <i>Criminology Research Act 1971</i>
13	<i>Customs Act 1901</i> , subsection 208DA(4)	Attorney-General	Minister for Home Affairs

**Schedule 1** Amendments

<b>Substitutions made on the Home Affairs transition day—references to Ministers in a single Act or instrument</b>			
	<b>Column 1 Affected provisions</b>	<b>Column 2 Existing reference</b>	<b>Column 3 Substitute reference</b>
14	<i>Customs (Prohibited Exports) Regulations 1958</i> , regulation 3	Attorney-General	Minister administering Part 2 of the <i>Classification (Publications, Films and Computer Games) Act 1995</i>
15	<i>Customs (Prohibited Imports) Regulations 1956</i> , regulation 4A	Attorney-General	Minister administering Part 2 of the <i>Classification (Publications, Films and Computer Games) Act 1995</i>
16	<i>Customs (Prohibited Imports) Regulations 1956</i> , regulation 4AA and Schedule 6	Attorney-General	Minister for Home Affairs
17	<i>Migration Act 1958</i> , sections 143 to 147 (inclusive) and 162	Attorney-General	Minister for Home Affairs
18	<i>Migration Regulations 1994</i> : (a) regulation 1.03, definition of <i>assistance notice</i> ; (b) regulation 2.07AK; (c) clause 060.511 of Schedule 2	Attorney-General	Minister for Home Affairs
19	<i>Offshore Petroleum and Greenhouse Gas Storage Act 2006</i> , subsections 604(5) and 610(4)	Attorney-General	Minister for Home Affairs
20	<i>Paid Parental Leave Act 2010</i> , Division 5 of Part 6-1	Attorney-General	Minister for Home Affairs
21	<i>Proceeds of Crime Act 2002</i> , paragraph 297(c)	the Minister	Attorney-General
22	<i>Safety, Rehabilitation and Compensation (Definition of Employee) Notice 2009 (1)</i> (as in force for the purposes of subsection 5(6) of the <i>Safety, Rehabilitation and Compensation Act 1988</i> ), Schedule	Attorney-General or the Minister for Justice	Minister for Home Affairs
23	<i>Service and Execution of Process Act 1992</i> , subsection 100(4)	Attorney-General for the Commonwealth	Minister for Home Affairs
24	<i>Social Security Act 1991</i> , Part 1.3B	Attorney-General	Minister for Home Affairs
25	<i>Telecommunications Act 1997</i> : (a) sections 58A and 581; (b) clauses 57A and 72A of Schedule 3A	Attorney-General	Minister for Home Affairs

**Substitutions made on the Home Affairs transition day—references to Ministers in a single Act or instrument**

<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>
<b>Affected provisions</b>	<b>Existing reference</b>	<b>Substitute reference</b>
26 <i>Telecommunications Act 1997</i> , sections 275B, 275D, 295Y, 295ZB and 295ZD	Minister administering the <i>Administrative Decisions (Judicial Review) Act 1977</i>	Minister for Home Affairs
27 <i>Terrorism Insurance Act 2003</i> , subsection 6(1)	Attorney-General	Minister for Home Affairs

**3 At the end of Part 3**

Add:

**3.4 Substitutions made on the Home Affairs transition day**

- (1) The following table sets out substitutions made on the Home Affairs transition day that affect provisions of multiple Acts or instruments that refer to Departments.

**Substitutions made on the Home Affairs transition day—references to Departments in multiple Acts or instruments**

<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>
<b>Affected provisions</b>	<b>Existing reference</b>	<b>Substitute reference</b>
1 All provisions	Department of Immigration and Border Protection	Department of Home Affairs

- (2) The following table sets out substitutions made on the Home Affairs transition day that affect provisions of a single Act or instrument that refer to Departments.

**Substitutions made on the Home Affairs transition day—references to Departments in a single Act or instrument**

<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>
<b>Affected provisions</b>	<b>Existing reference</b>	<b>Substitute reference</b>
1 <i>Australian Crime Commission Regulations 2002</i> , paragraph 9A(a) and Schedule 1A	Attorney-General's Department, if the reference to that authority would, apart from this item, be read as a reference to another Department in accordance with section 19A of the <i>Acts Interpretation Act 1901</i>	Attorney-General's Department
2 <i>Criminal Code</i> , paragraphs 72.28(1)(a) and (b)	the Department	Department of Home Affairs
3 <i>Criminal Code</i> , paragraph 474.17(2)(d)	Attorney-General's Department	Department of Home Affairs
4 <i>Customs Act 1901</i> , subsection 208DA(1) (definition of <i>prescribed officer</i> )	Attorney-General's Department	Department of Home Affairs

**Schedule 1** Amendments

<b>Substitutions made on the Home Affairs transition day—references to Departments in a single Act or instrument</b>		
<b>Column 1</b> <b>Affected provisions</b>	<b>Column 2</b> <b>Existing reference</b>	<b>Column 3</b> <b>Substitute reference</b>
5 <i>Customs (Prohibited Imports) Regulations 1956</i> , subregulation 4AA(7) (definition of <b>authorised person</b> )	Attorney-General’s Department	Department of Home Affairs
6 <i>Migration Regulations 1994</i> : (a) regulation 1.03, definition of <b>assistance notice</b> ; (b) clause 060.511 of Schedule 2	Attorney-General’s Department	Department of Home Affairs
7 <i>Safety, Rehabilitation and Compensation (Definition of Employee) Notice 2009 (1)</i> (as in force for the purposes of subsection 5(6) of the <i>Safety, Rehabilitation and Compensation Act 1988</i> ), Schedule	Attorney General’s Department	Department of Home Affairs
8 <i>Telecommunications Act 1997</i> , subclause 89(1) of Schedule 3A	Attorney-General’s Department	Department of Home Affairs
9 <i>Telecommunications (Data for emergency warning systems) Instrument 2016</i> , section 4 (definition of <b>Director-General, Emergency Management Australia</b> )	Commonwealth Attorney-General’s Department	Department of Home Affairs of the Commonwealth

**4 Section 4.2 (heading)**

Repeal the heading, substitute:

**4.2 Substitutions made on 6 May 2017**

**5 Section 4.2**

Omit “the day this instrument commences”, substitute “6 May 2017”.

**6 Section 4.2 (table heading)**

Repeal the heading, substitute:

**Substitutions made on 6 May 2017—references to Secretaries in a single Act or instrument**

**7 At the end of Part 4**

Add:

**4.3 Substitutions made on the Home Affairs transition day**

- (1) The following table sets out substitutions made on the Home Affairs transition day that affect provisions of multiple Acts or instruments that refer to Secretaries.

<b>Substitutions made on the Home Affairs transition day—references to Secretaries in multiple Acts or instruments</b>		
<b>Column 1</b> <b>Affected provisions</b>	<b>Column 2</b> <b>Existing reference</b>	<b>Column 3</b> <b>Substitute reference</b>
1 All provisions	Secretary of the Department of Immigration and Border Protection	Secretary of the Department of Home Affairs

- (2) The following table sets out substitutions made on the Home Affairs transition day that affect provisions of a single Act or instrument that refer to Secretaries.

<b>Substitutions made on the Home Affairs transition day—references to Secretaries in a single Act or instrument</b>		
<b>Column 1</b> <b>Affected provisions</b>	<b>Column 2</b> <b>Existing reference</b>	<b>Column 3</b> <b>Substitute reference</b>
1 <i>A New Tax System (Family Assistance) Act 1999</i> , subsection 57GJ(4)	Attorney-General's Secretary	Secretary of the Department of Home Affairs
2 <i>Customs (Prohibited Imports) Regulations 1956</i> , subitem 9.3 in Part 1 of Schedule 6	Secretary of the Attorney-General's Department	Secretary of the Department of Home Affairs
3 <i>Migration Act 1958</i> , paragraph 143(1)(a)	Secretary of the Attorney-General's Department	Secretary of the Department of Home Affairs
4 <i>Migration Regulations 1994</i> : (a) regulation 1.03, definition of <b>assistance notice</b> ; (b) clause 060.511 of Schedule 2	Secretary of the Attorney-General's Department	Secretary of the Department of Home Affairs
5 <i>Paid Parental Leave Act 2010</i> , subsection 278C(3)	Attorney-General's Secretary	Secretary of the Department of Home Affairs
6 <i>Social Security Act 1991</i> , subsection 38N(3)	Attorney-General's Secretary	Secretary of the Department of Home Affairs
7 <i>Telecommunications Act 1997</i> , clauses 55A, 57, 58, 70, 71, 73 and 89 of Schedule 3A	Secretary of the Attorney-General's Department	Secretary of the Department of Home Affairs