



10 December 2019

Committee Secretary
Parliamentary Joint Committee on Intelligence and Security
PO Box 6021
Parliament House
Canberra ACT 2600

By email: pjcis@aph.gov.au

Dear Committee Secretary,

Further Submission to the Inquiry into the impact of the exercise of law Enforcement and intelligence powers on the freedom of the press

1. We refer to the above inquiry, and our submission dated 31 July 2019 and supplementary submission dated 20 October 2019 to the Joint Committee on Intelligence and Security (the **Committee**).
2. We thank the Committee for the opportunity to provide this further supplementary submission.
3. ARTK is encouraged by the AFP's recently reported commitment to work with Government, the Committee and media organisations to identify and implement more cooperative and less intrusive mechanisms to support the collection of evidence in the course of unauthorised disclosure investigations.
4. We particularly note, and are encouraged by, AFP Commissioner Kershaw's recent comments and evidence to the Senate Environment and Communications Committee inquiry into press freedom outlining the AFP's commitment to giving effect to the recent requirements under the recent Ministerial Direction to the AFP. This includes a clear expectation that the AFP will take into account the importance of free press and broader public interest implications before undertaking any investigative action involving a journalist or media organisation.

5. To that end Commissioner Kershaw outlined an internal national guideline on investigations of the unauthorised disclosure of material made or obtained by a current or former Commonwealth officer, including a requirement that the head of the referring department or agency provide a harm statement indicating where the disclosure of the material would be expected to compromise Australia's national security or national interests or to cause other significant harm.
6. The Commissioner also articulated that the AFP, *"as part of evaluating the referral the evaluation must also take into account the following three matters: firstly, whether, on balance, the public interest in the importance of a free and open press in Australia's democratic society is outweighed by the public interest in the enforcement of the criminal law by the AFP; secondly, if a criminal investigation were to proceed, the way in which the AFP would seek to proceed with an investigation and the extent to which that investigation would likely involve investigative action involving a professional journalist or news media organisation; and, finally, any defences available to any party that may be subject to the investigation."*¹
7. In the spirit of giving effect to these through the adoption of concrete legislative proposals, ARTK puts forward in this submission proposed legislative drafting for two of its existing proposals, being:
 - (a) Journalist "exemption" to criminal liability in relation to bone fide reporting activity; and
 - (b) Contestable journalist warrants.
8. We are firmly of the view that a robust legislative framework that includes these important elements is essential to ensure that the key functions of the AFP – the enforcement of the criminal law – and the media are both done and seen to be done.
9. ARTK welcomes the Committee's ongoing engagement with these important public policy issues, and would be pleased to assist further.

JOURNALIST EXEMPTIONS FROM CRIMINAL LIABILITY

10. Further to our submissions on the need for an exemption for journalists from national security laws that threaten to jail journalists for doing their jobs, ARTK has prepared a proposed "pro forma" or uniform provision to amend specific offence provisions for the Committee's consideration.
11. The suggested uniform provision takes the following form:

(X) [Current operative offence provision]

(Y) Subsection (X) does not apply to a person who communicates, removes, holds or otherwise deals with 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 or documentary media, and:

(a) at that time, the person believed that engaging in that conduct was in the public interest; or

(b) the person:

¹ Hansard [transcript](#) of Senate Committee Hearing, p49-50

- (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 or documentary 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 believed that engaging in that conduct was in the public interest.*

(Z) In a prosecution for an offence against subsection (X), the defendant does not bear an evidential burden in relation to the matters in subsection (Y) despite subsection 13.3(3) of the Criminal Code

12. We provide in **Annexure A** of this letter a comprehensive list of provisions with suggested amendments based on the "uniform" provision designed to afford legal protection for persons engaged in bona fide reporting in the public interest. Some amendments depart in certain aspects from the proposed "uniform" provision having regard to the specific nature of the offence in question.
13. The proposed amendments are to:
 - (a) section 35P of the *Australian Security Intelligence Organisation Act 1979* (Cth);
 - (b) sections 80.3, 91.4, 91.6, 91.9, 91.13, 92.5, 92A.1, 119.7, 122.5, 131.1, 132.1 and 474.47 of the *Criminal Code Act 1995* (Cth);
 - (c) sections 3ZZHA, 15HK, 70 and 79 of the *Crimes Act 1914* (Cth);
 - (d) section 73A of the *Defence Act 1903* (Cth); and
 - (e) section 40 of the *Intelligence Services Act 2001* (Cth).
14. The key features of the proposed amendments are:
 - (a) The amendments proceed on the bases that the public interest is best served by formulating a principled approach and applying it consistently across all relevant Commonwealth offences, justifying a uniform journalist protection that will operate in respect to various specific offences.
 - (b) The proposed amendments to the specific offences identified in Annexure A are not to be taken as an acknowledgment by ARTK that such specific offences apply to the legitimate journalism of its current members. Rather, ARTK's concern is that there is a risk of both prosecution for or investigation pursuant to such offence provisions – some of which have in fact been relied on in relation to current and previous investigations. It is that risk of investigation (including its attendant "warrant related activities"), as well as prosecution, that creates the "chilling effect" that inhibits public interest journalism.
 - (c) The pro-forma journalist protection amendment has been modelled on the existing s 122.5(6) of the Criminal Code.

- (d) The Committee will see that ARTK's proposed amendments generally express the protection as an "exception", however ARTK has sought to address the one key matter where the characterisation of the protection as either a component of the primary offence, or as a "defence", "exception" etc, may have significant practical or legal relevance – namely, on the issue of burden and onus of proof.
- (e) On the issue of burden and onus of proof:
- (i) It is important for law enforcement to be under a practical obligation to gather evidence, and form opinions, as to whether the protection applies from the *outset* of an investigation that is consistent with the Attorney-General's directive. If such matters are not taken into account at that formative stage of an investigation, then criminal investigations into journalists for breaches of the criminal law will continue for several years, at a cost of many hundreds of thousands of dollars in legal costs.
 - (ii) Where a defendant bears an evidential onus in relation to establishing the existence of a journalist protection, any *practical* obligation on law enforcement to investigate, and discount, the existence of a journalist protection is lessened, potentially significantly. The issue becomes a matter *for the defendant* to raise in due course.
 - (iii) The recent removal of any evidential onus on a journalist defendant in relation to the recent agricultural encroachment offences (an approach adopted by ARTK's proposed amendments) means our proposal is in the nature of harmonising and modernising the statute book in light of this welcome recent policy advance. The effect is that legislative amendments which cast both the legal and evidential onus on the prosecution to establish, beyond a reasonable doubt, both the elements of the substantive offence and also the non-applicability of the proposed journalist protection are consistent with recent directives and legislation.
 - (iv) We believe that the legislative model to achieve this policy outcome is in the form now found in s 474.47(2A) of the Criminal Code (see, relevantly, *Supplementary Explanatory Memorandum. Criminal Code (Agricultural Protection) Bill 2019* (Cth) paras [5] – [10]). The proposed amendments have been drafted accordingly. However, if the Committee does not consider this policy object is achieved by this drafting, we would happily propose alternative wording if required.
- (f) The policy intention is for the journalist protections to apply to both primary offences (where the physical element of an offence is satisfied by a relevant act of receiving material or disseminating material by a journalist),² and also to accessorial offences (where the physical element of the offence is satisfied by the conduct of another person – such as a "source" in government – disclosing material – and where a journalist's involvement in that conduct may give rise to accessorial liability under Criminal Code ss 11.1 - 11.5).³ Any protection applying to journalists in their own right would be meaningless if they could still be charged and prosecuted as accessories to offences committed by others within Government.

² For example, see proposed s 35P(3B) of the *Australian Security Intelligence Act 1997* (Cth) (**ASIO Act**), in its application to an offence under s 35(2A).

³ For example, proposed s 35P(3B) of the ASIO Act in its application to s 35P(1) of the ASIO Act.

- (g) ARTK considers that the proposed uniform (or pro forma) drafting gives effect to this intention: relevantly, the drafting provides that a relevant offence section "does not apply" to an individual if the protection is available. The drafting, for these purposes, assumes that a journalist may be the subject of an offence:
- (i) where the journalist personally contravenes an offence provision;
 - (ii) where the journalist is not capable of themselves contravening the offence (for example, because the offence applies only to current or former Commonwealth officers), but where the journalist aids, abets, counsels or procures contravention by another person of the offence provision,⁴ engages in a joint criminal commission,⁵ or engages in the commission of the offence by proxy⁶ - where the Criminal Code appears to treat such conduct as an "extension" of the primary offence;⁷ and
 - (iii) where the journalist instead incites the commission of the offence by another person,⁸ or conspires with that other person⁹ - where the Criminal Code, prima facie, deems the reference to a primary offence to include an offence by a person engaged in incitement or conspiracy, unless a contrary intention appears – see Criminal Code s 11.6(2).
- (h) This is, of course, a technical matter of drafting and ARTK would welcome engaging with the Committee on revised wording if needed.
- (i) The amendments need to be "retrospective" in the sense that they should apply to now repealed offences in the former s 70 and 79 of the *Crimes Act 1914* (Cth) (**Crimes Act**). ARTK considers that this is appropriate for several reasons:
- (i) No policy purpose is served having a statute book which is inconsistent in its treatment of public interest journalism having regard to the date of alleged offending. Continuing criminal investigations into conduct which, if engaged in now, would clearly engage a journalist protection simply brings the administration of justice into disrepute. The case for modification of the now repealed s 79 of the Crimes Act is, in particular, stark – in that instance, there is already a journalist protection in place in relation to the cognate successor offence now found in s 122.4A of the Criminal Code.
 - (ii) In light of the position adopted by the Commonwealth and Australian Federal Police in the ongoing High Court proceedings *Smethurst v Commissioner of Police* S196/2019, it appears accepted that at least Crimes Act s 79 (and by implication, other repealed offences) must be given significantly more limited constructions than suggested by their literal terms to ensure their constitutionality. The current proposed reforms would be an opportunity for the Parliament, in respect of the repealed Crimes Act offences more generally, to adopt a standardised approach that effects a reasonable balancing of the competing public interests.

⁴ Criminal Code s 11.2.

⁵ Criminal Code s 11.2A.

⁶ Criminal Code 11.3.

⁷ Note to s 11.6 of the Criminal Code.

⁸ Criminal Code s 11.4.

⁹ Criminal Code s 11.5.

- (j) We consider the proposed drafting in Annexure A is an appropriate legislative response. As a matter of principle, there is no question that the Commonwealth Parliament may pass laws to, in substance, reframe past offences, both in the manner we have suggested, and generally.

CONTESTABLE JOURNALIST WARRANTS

15. ARTK welcomes further engagement by the AFP on this issue – noting that the issue of search warrants and journalist "raids" is a central issue when it comes to striking a balance being the public interest in a free media and the legitimate interests of law enforcement. In particular, ARTK hopes that the AFP's recently reported commitment to implementing "more cooperative and less intrusive mechanisms to support the collection of evidence in the course of unauthorised disclosure obligations" will lead to a reassessment by the AFP of its past opposition to contestability of warrants.
16. In the meantime, and in the interests of furthering a constructive policy dialogue on this issue, ARTK puts forward "minimalist" intervention across the Commonwealth statute book with the following key features:
- (a) Primary decision-makers currently authorised to issue warrants (or make related forms of coercive order) (together, "**warrant instruments**") will remain primary decision-makers, and subject to one key change, will remain authorised to issue warrant instruments on the same terms, and having regard to the same sets of statutory considerations, as now.
 - (b) The only proposed limitation on primary decision-makers will be that, in clearly defined circumstances, a "journalist access authorisation" will need to be first obtained by the applicant for the warrant instrument in order for any warrant instrument to validly authorise the collection of "journalism material". Further, any warrant instrument issued will need to conform to any limitations or restrictions imposed by the "journalist access authorisation".
 - (c) The proposal for a "journalist access authorisation" is informed by three key principles:
 - (i) The first principle is contestability – a journalist access authorisation should only issue following a contested application at which the journalist or media organisation affected has a right to participate and present evidence or make submissions. In due recognition of the legitimate interests of law enforcement, ARTK has sought, in its proposed draft provisions, to ensure that appropriate orders in respect of the confidentiality of investigatory materials can be made.
 - (ii) The second principle is the need for a public interest test – access to journalism materials should only be authorised when it is in the public interest to do so, having regard to factors that highlight the importance of public interest journalism but which also balance the legitimate interests of law enforcement. The proposed test is based on the existing test set out in section 180L(2) of the *Telecommunications (Interception and Access) Act 1979* (Cth) (**Telco Interception Act**).
 - (iii) The third principle is that senior judicial decision-makers (judges of the Federal Court and judges of the State and Territory Supreme Courts) should make determinations in relation to access of "journalist materials". The exercise of functions by senior junior

officers acting independently of government has advantages for both law enforcement and for person's affected: it means that senior decision-makers within government authorised to issue warrant instruments will be permitted to do so without having to engage in a contested inquiry, from which judicial review applications may ultimately lie.

17. Current arrangements concerning warrant instruments are ad hoc and inconsistent, and the absence of specific journalist protections, and their existence (in particular, under the "journalist warrant" regime under the Telco Interception Act) is explained only by history and not public policy considerations.
18. The proposal addresses this problem by inserting a new, standalone division of the *Crimes Act 1914* (Cth) (**Crimes Act**) dealing with the issue of "journalist access authorisations", which is based (with proposed enhancements) on the current regime for the issue of "journalist warrants" under the Telco Interception Act. The proposal is for other substantive provisions on the Commonwealth statute book dealing with the issue of warrant instruments to be amended as per a uniform provision to make the issue of a journalist access authorisation (and compliance with its terms) a condition for issuing a substantive warrant.
19. The proposal, importantly, allows for a judge who is separately authorised to issue a warrant instrument to also issue the related journalist access authorisation at the same time.
20. A flow chart of the proposed process is set out in **Annexure B**.
21. ARTK's proposed drafting of the standalone "model" provisions is set out below. For these purposes, a range of specific Commonwealth legislative amendments dealing with the issue of warrants which themselves (potentially with related provisions) will require amendment, are set out in **Annexure C**.
22. This list is necessarily provisional given that there is multiple, potentially hundreds, of pieces of Commonwealth legislation that allow the issuing of warrants (e.g. *Fisheries Management Act 1991* (Cth) s 85, *Gene Technology Act 2000* (Cth) ss 172-173, *Human Services (Medicare) Act 1973* (Cth) s 8Y, *Biosecurity Act 2015* s 488 (Cth), *Hazardous Waste (Regulation of Exports and Imports) Act 1989* (Cth) ss 49, 50). In progressing this proposal, we would look forward to engaging with the Committee further on an appropriate list of further provisions that would require amendment.
23. The proposed amendments are as follows. Notes to the text follow from paragraph 22 onward.

Amendments to s 3 of the Crimes Act:

Journalist access authorisation means an authorisation in force issued under [New Division of Crimes Act, as set out in paragraph 5 of this letter].

Journalism material means material that is acquired, held or created by a person in that person's capacity as a person engaged in the business of reporting news, presenting current affairs or expressing editorial or other content in news or documentary media.

New Division of the Crimes Act 1914:

1 Definitions

In this Division:

Affected person means:

- (a) *In relation to a proposed relevant warrant instrument which is in the nature of an authority to seize, locate or record documents, articles, electronic records, and similar items – any person reasonably believed by the applicant for a journalist access application to be:*
- (i) *in possession of journalism material, or to enter into possession of such material, in that person's capacity as a person engaged in the business of reporting news, presenting current affairs or expressing editorial or other content in news or documentary media; or*
 - (ii) *not in possession of the journalism material that is the subject of the relevant journalist access authorisation – where the person has provided, or will provide, journalism material in connection with that person's activities as a person engaged in the business of reporting news, presenting current affairs or expressing editorial or other content in news or documentary media to a third party;*

where that journalism material is reasonably believed by the applicant to be the subject of a journalist access authorisation sought under this Division.

Note:

Subsection (a)(ii) of the definition would include circumstances where a warrant is directed to an off-site server, data centre operator, telecommunications carrier, or similar third party who holds electronic records generated by, and maintained on behalf of, a journalist. In such circumstances the journalist on whose behalf electronic records are held is an "affected person". [Comment One]

- (b) *In relation to a proposed relevant warrant instrument which is in the nature of an authority to authorise the interception of communications or the recording of communications on an ongoing basis – any person:*
- (i) *reasonably believed by the applicant for a journalist access application to be person acquiring, generating or imparting journalist material in connection with that person's activities as a person engaged in the business of reporting news, presenting current affairs or expressing editorial or other content in news or documentary media to a third party; and*
 - (ii) *where such communications are reasonably believed by the applicant for a journalist access authorisation to be the subject of a journalist access authorisation sought under this Division.*
- (c) *Any entity who employs or engages a person referred to in (a) or (b) above in connection to that person's capacity as a person engaged in the business of reporting news, presenting current affairs or expressing editorial or other content in news or documentary media.*

Eligible Judge means a judge of the Federal Court, or a judge of a Supreme Court of a State or Territory.

Legal practitioner means:

- (a) a barrister, a solicitor, a barrister and solicitor, or a legal practitioner, of the High Court or of a Supreme Court of a State or Territory; or
- (b) a person entitled to engage in legal practice under an Act.

Relevant Act means an Act authorising the issue of a relevant warrant instrument.

Relevant warrant instrument means a warrant issued under s 3E(1), [Parliamentary Counsel will be required to insert a full list of the provisions in the Crimes Act and other pieces of Commonwealth legislation that will be amended as per proposed cl 1 of the "uniform" amendments proposed below]

2 Applying for a journalist access authorisation

(1) A person authorised to apply for a relevant warrant instrument under a relevant Act may apply to an eligible Judge for the issue of a journalist access authorisation in connection with a proposed relevant warrant instrument proposed to be issued under a relevant Act.

(2) The application must:

- (a) specify the facts and other grounds relied on in support of the application;
- (b) specify the journalism material that is the subject of the application;
- (c) be accompanied by a statement by the applicant that sets out short particulars of the applicant's knowledge and belief concerning:
 - (i) whether there is, or will be in the next 72 hours journalist material that is the subject of the proposed warrant instrument; and
 - (ii) whether, in the preceding six months prior to the making of an application, the applicant is aware of any application that has been made under this Division in relation to any journalism material that is the subject of the application, and the outcome of any such application.

(3) Subject to any contrary direction of the eligible Judge made under subsection (4), the applicant must serve the application for a journalist access authorisation:

- (a) on any affected person; and
- (b) on any other person directed by the eligible Judge to be served as a proper party to the application.

(4) Upon application by a person applying for a journalist access authorisation, or on his or her own motion, an eligible Judge considering the application may make directions as to the manner of service or the content of any material to be served. For the avoidance of doubt, a direction under this subsection must not derogate from the right of an affected person to a fair hearing under subsection (3)(1).

(5) Subject to subsection (6), a person served with an application under subsection (3) and (4) must not intentionally conceal, destroy alter or dispose of any journalism material which is the subject of that application prior to the determination of that application under section 3(1).

Penalty: 476 penalty units **[Comment Two]**

(6) An eligible Judge who is separately authorised to issue a relevant warrant instrument under a relevant Act may concurrently consider and determine any related journalist access application under this Division.

3 Issuing journalist access authorisations

(1) An eligible judge, upon hearing from the applicant and any person served with notice of the application under section 2 (3),(4), must either:

- (a) issue an journalist access authorisation, authorising access to identified journalism material;*
- (b) refuse to issue an journalist access application;*

(2) An eligible judge must not issue a journalist access authorisation unless satisfied that the issue of the authorisation is in the public interest having regard to:

- (a) the public interest in preserving the confidentiality of journalist sources;*
- (b) the public interest in facilitating the exchange of information between journalists and members of the public to facilitate reporting of matters in the public interest;*
- (c) the gravity of the matter in relation to which the journalist access application is sought;*
- (d) the extent to which the information that is sought pursuant to the journalist access application is likely to assist a current investigation under an Act;*
- (e) whether reasonable attempts have been made to obtain the information sought by the journalist access application by other means;*
- (f) the nature and extent of any conditions or restrictions proposed by the eligible Judge to be imposed any journalist access authorisation under subsection (2); and*
- (g) any other relevant matter.*

(3) A journalist access authorisation issued under this section may specify conditions or restrictions concerning the manner in which journalism material may be accessed, retrieved, or otherwise dealt with by persons authorised by a relevant Act to conduct activities in connection with a relevant warrant instrument.

Note:

*In performing a function under this Division, or in exercising a power, an eligible Judge performs those functions, or exercises such powers (as the case may be) subject to the limits specified in s 4AAA. **[Comment Three]***

(4) In any application for a journalist access application, the applicant and any person served under section 2(3) and (4) may be represented by a legal practitioner.

4 Terms duration and revocation of journalist access authorisation

(1) A journalist access authorisation issued under this Division must state:

- (a) the journalist material to which it relates;*
- (b) any conditions or restrictions specified under section 3(3);*
- (c) the time at which the authorisation comes into force*
- (d) the time at which the authorisation ceases to have effect;*

(2) A journalist access authorisation:

(a) comes into force at the time issued, unless the eligible Judge specifies a later time;

(b) unless revoked under subsection (3):

(i) ceases to have effect at a time determined by the eligible Judge, being a time no later than the end of the period of 60 days beginning at the time that the authorisation comes into force; or

(ii) if no determination is made under subsection (a)(i), at the end of the 60 days beginning at the time that the authorisation comes into force.

(3) A journalist access authorisation may be revoked by the eligible Judge or, if unavailable, another eligible Judge, where the eligible Judge in question:

(a) is satisfied that the grounds on which the journalist access authorisation issued have ceased to exist; or

(b) is otherwise satisfied that it is no longer appropriate for the journalist access authorisation to remain in force.

5 Subsequent applications in relation to existing journalist access authorisation

(1) A person with a sufficient interest may apply to the eligible Judge who has issued a journalist access authorisation, or if he or she is unavailable, to another eligible Judge, in relation to matters concerning an issued journalist access authorisation.

(2) Without limitation, an application under subsection (1) may concern:

(a) the modification of conditions or restrictions imposed under section 3(3);

(b) the imposition of further restrictions or conditions concerning the manner in which journalism material may be accessed, retrieved, or otherwise dealt with by persons authorised by a relevant Act to conduct activities in connection with a relevant warrant instrument, including restrictions or conditions concerning material that has already been seized or accessed under a relevant warrant instrument; or

(c) the revocation of the journalist access authorisation.

(3) Upon hearing from the applicant, any person previously served with notice under section 2(3), and any other affected party, the eligible Judge hearing the application may make such orders as he or she considers appropriate.

[Comment Four]

"Uniform" amendments proposed to miscellaneous provisions governing the issue of warrant instruments:

Amended definitions:

Journalist access authorisation has the meaning given in s 3 of the Crimes Act 1914 [For insertion in Acts other than the Crimes Act]

Journalism material has the meaning given in s 3 of the Crimes Act 1914 [For insertion in Acts other than the Crimes Act]

Operative amendments:

(1) Subject to sub-sections (2) and (3), [this amendment is to be made to the existing statutory provision dealing with the grant of the warrant instrument in question – the intention is to leave, subject to the specific amendments proposed below, the substantive powers of existing decision-makers (and the identity of those decision-makers) unchanged].

(2) A [existing decision-maker under sub-section (1)] must not issue a [instrument] under [sub-section (1)] where the [decision-maker in sub-section (1)] knows, or reasonably believes, that there is or, within the next 72 hours, will be, journalism material at [the premises/relevant location] to which the [application for an instrument in sub-section(1)] relates, unless a journalist access authorisation is in force in relation to [the premises/thing]. **[Comment Five]**

(3) Where a journalist access authorisation is in force in relation to [the premises/thing – drafting to be finalised], the [officer issuing the instrument under sub-section (1)]:

- (a) may, upon satisfaction of the matters specified in [sub-section (1)], issue [an instrument under sub-section (1)] authorising seizure of any material that is not journalism material; and
- (b) may, upon satisfaction of the matters specified in [sub-section (1)], issue [an instrument under sub-(1)] authorising seizure of journalism material, provided that:
 - (i) the relevant journalist access authorisation authorises the seizure of that material; and
 - (ii) the terms of the [instrument under sub-section (1)] incorporate any conditions or restrictions concerning the manner in which journalism material may be accessed, retrieved, or otherwise dealt with imposed under [proposed s 3(3) of the .

Note: An [instrument under sub-section (1)] may potentially be issued by the same [description of the authorised person] who issues an access authorisation under [proposed s 2(6) of the new Division of the Crimes Act outlined above]

(4) An application for a [instrument under sub-section (1)] must be accompanied by a statement by the [applicant for a sub-section (1) warrant] that sets out short particulars of the applicant's knowledge and belief concerning whether there is, or will be in the next 72 hours, journalist material [at the premises / on the thing].

(5) Subject to sub-section (6), [this amendment is to be made to any existing provision – if any – dealing with the authorisation by executing officers to seize material in the context of a raid authorised by a warrant or related order, such as s 3F of the Crimes Act]

(6) The [seizure] of journalism material is not authorised unless:

(a) an [instrument issued under sub-(1)] has been issued under subsection (3)(b); and

(b) the seizure of relevant journalism material is authorised by [the instrument] issued under subsection 3(b).

24. **Comment One:** The policy intention behind the proposed definition is set out in the proposed drafter's note. If the Committee wish to propose alternate drafting to give effect to that policy intention, we would welcome the opportunity to discuss refinements
25. **Comment Two:** A penalty unit is currently \$210 – see s 4AA *Crimes Act*. The proposed penalty is therefore approximately \$100,000.
26. **Comment Three:** If there is any doubt that s 4AAA of the Crimes Act does not apply in connection with the performance of functions by an eligible Judge under the proposed new division, then that section would require specific amendment to extend its application.
27. **Comment Four:** There is a need for consequential amendments to the *Administrative Decisions (Judicial Review) Act 1977* (Cth) to ensure that s 13 of that Act applies in relation to decisions of an eligible Judge made under the proposed new division.
28. **Comment Five:** Some refinement of the text in square brackets may be warranted depending on the specific warrant context in question. The policy intention is that the primary decision-maker's attention be directed to the premises, area or other thing that will be the subject of compulsive access under the warrant instrument in question, with a view to that decision-maker evaluating whether "journalist material" may be located through that form of access. The appropriate wording to give effect to that intention will differ depending on the type and nature of compulsive access that is authorised by the instrument in question.

Other matters

29. The Committee will note that this model does not include a public interest advocate regime such as that which presently exists for Journalist Information Warrants under Division 4C of the *Telco Interception Act*. ARTK does not believe that this model is appropriate, for the following key reasons:
- (a) Firstly, the current model does not explicitly provide that the public interest advocate's role is not to advocate on behalf of the journalist or media organisation who is to be the subject of the warrant: reg 14(2) of the *Telecommunication (Interception and Access) Regulations 2017* (Cth) provides for the current public interest advocate to put forward submissions "relevant" to the decision to issue a journalist warrant, "including" (but not limited to) facts and circumstances which support the conclusion that the warrant should not issue.
- (b) That is inconsistent with the fact that an applicant is in a position to present a partisan position. If a process is to involve adversarial elements it requires, as a recognised incident

of a fair hearing, that there be "equality of arms" – that all affected parties with conflicting interests be able to put forward competing sides of an argument. Almost all judicial and administrative frameworks proceed on this basis, based on the recognition that this is the framework best suited to generating sound and defensible decisions which command the acceptance of those who are subject to decisions.

- (c) Secondly, public interest advocates do not have all the necessary information available to properly appraise a decision-maker of the factual matters necessary to make the public interest assessment which is at the heart of the (current) journalist warrant framework, and nor would they under the modified test proposed above. A public interest advocate – particularly one who cannot take instructions from media entities or persons affected – cannot take instructions on factual matters such as the nature of the journalistic investigation in question, the potential "sources" whose identities may be disclosed, etc. A public interest test is meaningless if a complete and full factual picture cannot be presented to the decision-maker.
- (d) Thirdly, concerns about disclosure of sensitive investigatory material can be dealt with, as per the proposal set out above, by a combination of:
 - (i) The eligible Judge conducting the hearing, and structuring its processes, to protect such material when doing so is consistent with the legal requirement to conduct a fair hearing; and
 - (ii) Specific penalties applying for destruction of evidence and other obstruction offences committed by those served with notice of an application – noting that, under the terms of the current Ministerial Direction, it is now incumbent on law enforcement to, where possible, seek "voluntary assistance" from media organisations before seeking and executing warrants. In circumstances where a media organisation will be expressly put on notice of a current police investigation, concerns about providing media with a right to be involved in the issue of a warrant "tipping off" the subject of an investigation, and triggering obstruction of justice offenses, are overstated.

NEXT STEPS

- 30. ARTK welcomes further engagement on these issues, including making representatives available to discuss these proposals in person at the Committee's convenience. To that end please contact Georgia-Kate Schubert [REDACTED]

Kind regards

Georgia-Kate Schubert

On behalf of Australia's Right to Know coalition of media companies

ANNEXURE A
Amended Legislative Provisions

Section	Current Provision	Redrafted Provision with Exception
<i>Australian Security Intelligence Organisation Act 1979 (Cth)</i>		
<p>Section 35P: Unauthorised disclosure of information</p>	<p>Disclosures by entrusted persons</p> <p>(1) A person commits an offence if:</p> <ul style="list-style-type: none"> (a) the person is, or has been, an entrusted person; and (b) information came to the knowledge or into the possession of the person in the person’s capacity as an entrusted person; and (c) the person discloses the information; and (d) the information relates to a special intelligence operation. <p>Penalty: Imprisonment for 5 years.</p> <p>Note: Recklessness is the fault element for paragraphs (1)(b) and (d)—see section 5.6 of the Criminal Code.</p> <p>(1A) Strict liability applies to paragraph (1)(a).</p> <p>Note: For strict liability, see section 6.1 of the Criminal Code.</p> <p>(1B) A person commits an offence if:</p> <ul style="list-style-type: none"> (a) the person is, or has been, an entrusted person; and (b) information came to the knowledge or into the possession of the person in the person’s capacity as an entrusted person; and (c) the person discloses the information; and (d) the information relates to a special intelligence operation; and (e) either or both of the following subparagraphs apply: <ul style="list-style-type: none"> (i) the person intends to endanger the health or safety of any person or prejudice the effective conduct of a special intelligence operation; (ii) the disclosure will endanger the health or safety of any person or prejudice the effective conduct of a special intelligence operation. <p>Penalty: Imprisonment for 10 years.</p> <p>Note: Recklessness is the fault element for paragraphs (1B)(b) and (d) and subparagraph (1B)(e)(ii)—see section 5.6 of the Criminal Code.</p> <p>(1C) Strict liability applies to paragraph (1B)(a).</p> <p>Note: For strict liability, see section 6.1 of the Criminal Code.</p> <p><i>Other disclosures</i></p> <p>(2) A person commits an offence if:</p> <ul style="list-style-type: none"> (a) the person discloses information; and (b) the information relates to a special intelligence operation; and (c) the disclosure will endanger the health or safety of any person or prejudice the effective conduct of a special intelligence operation. <p>Penalty: Imprisonment for 5 years.</p> <p>Note: Recklessness is the fault element for paragraphs (2)(b) and (c)—see section 5.6 of the Criminal Code.</p> <p>(2A) A person commits an offence if:</p> <ul style="list-style-type: none"> (a) the person discloses information; and (b) the information relates to a special intelligence operation; and (c) either or both of the following subparagraphs apply: <ul style="list-style-type: none"> (i) the person intends to endanger the health or safety of any person or prejudice the effective 	<p>Disclosures by entrusted persons</p> <p>(1) A person commits an offence if:</p> <ul style="list-style-type: none"> (a) the person is, or has been, an entrusted person; and (b) information came to the knowledge or into the possession of the person in the person’s capacity as an entrusted person; and (c) the person discloses the information; and (d) the information relates to a special intelligence operation. <p>Penalty: Imprisonment for 5 years.</p> <p>Note: Recklessness is the fault element for paragraphs (1)(b) and (d)—see section 5.6 of the Criminal Code.</p> <p>(1A) Strict liability applies to paragraph (1)(a).</p> <p>Note: For strict liability, see section 6.1 of the Criminal Code.</p> <p>(1B) A person commits an offence if:</p> <ul style="list-style-type: none"> (a) the person is, or has been, an entrusted person; and (b) information came to the knowledge or into the possession of the person in the person’s capacity as an entrusted person; and (c) the person discloses the information; and (d) the information relates to a special intelligence operation; and (e) either or both of the following subparagraphs apply: <ul style="list-style-type: none"> (i) the person intends to endanger the health or safety of any person or prejudice the effective conduct of a special intelligence operation; (ii) the disclosure will endanger the health or safety of any person or prejudice the effective conduct of a special intelligence operation. <p>Penalty: Imprisonment for 10 years.</p> <p>Note: Recklessness is the fault element for paragraphs (1B)(b) and (d) and subparagraph (1B)(e)(ii)—see section 5.6 of the Criminal Code.</p> <p>(1C) Strict liability applies to paragraph (1B)(a).</p> <p>Note: For strict liability, see section 6.1 of the Criminal Code.</p> <p><i>Other disclosures</i></p> <p>(2) A person commits an offence if:</p> <ul style="list-style-type: none"> (a) the person discloses information; and (b) the information relates to a special intelligence operation; and (c) the disclosure will endanger the health or safety of any person or prejudice the effective conduct of a special intelligence operation. <p>Penalty: Imprisonment for 5 years.</p> <p>Note: Recklessness is the fault element for paragraphs (2)(b) and (c)—see section 5.6 of the Criminal Code.</p> <p>(2A) A person commits an offence if:</p> <ul style="list-style-type: none"> (a) the person discloses information; and (b) the information relates to a special intelligence operation; and (c) either or both of the following subparagraphs apply: <ul style="list-style-type: none"> (i) the person intends to endanger the health or safety of any person or prejudice the effective

Section	Current Provision	Redrafted Provision with Exception
	<p>conduct of a special intelligence operation;</p> <p>(ii) the person knows that the disclosure will endanger the health or safety of any person or prejudice the effective conduct of a special intelligence operation.</p> <p>Penalty: Imprisonment for 10 years.</p> <p>Note: Recklessness is the fault element for paragraph (2A)(b)—see section 5.6 of the Criminal Code.</p> <p><i>Exceptions</i></p> <p>(3) Subsections (1) to (2A) do not apply if the disclosure was:</p> <p>(a) in connection with the administration or execution of this Division; or</p> <p>(b) for the purposes of any legal proceedings arising out of or otherwise related to this Division or of any report of any such proceedings; or</p> <p>(c) in accordance with any requirement imposed by law; or</p> <p>(d) in connection with the performance of functions or duties, or the exercise of powers, of the Organisation; or</p> <p>(e) for the purpose of obtaining legal advice in relation to the special intelligence operation; or</p> <p>(f) to an IGIS official for the purpose of the Inspector-General of Intelligence and Security exercising powers, or performing functions or duties, under the Inspector-General of Intelligence and Security Act 1986; or</p> <p>(g) by an IGIS official in connection with the IGIS official exercising powers, or performing functions or duties, under that Act.</p> <p>Note: A defendant bears an evidential burden in relation to the matters in this subsection—see subsection 13.3(3) of the Criminal Code.</p> <p>(3A) Subsections (2) and (2A) do not apply to a person disclosing information if:</p> <p>(a) the information has already been communicated, or made available, to the public (the prior publication); and</p> <p>(b) the person was not involved in the prior publication (whether directly or indirectly); and</p> <p>(c) at the time of the disclosure, the person believes that the disclosure:</p> <p>(i) will not endanger the health or safety of any person; and</p> <p>(ii) will not prejudice the effective conduct of a special intelligence operation; and</p> <p>(d) having regard to the nature, extent and place of the prior publication, the person has reasonable grounds for that belief.</p> <p>Note: A defendant bears an evidential burden in relation to the matters in subsection (3A)—see subsection 13.3(3) of the Criminal Code.</p> <p><i>Extended geographical jurisdiction</i></p> <p>(4) Section 15.4 of the Criminal Code (extended geographical jurisdiction—category D) applies to an offence against subsection (1), (1B), (2) or (2A).</p> <p>(5) Subsection (4) does not, by implication, affect the interpretation of any other provision of this Act.</p>	<p>conduct of a special intelligence operation;</p> <p>(ii) the person knows that the disclosure will endanger the health or safety of any person or prejudice the effective conduct of a special intelligence operation.</p> <p>Penalty: Imprisonment for 10 years.</p> <p>Note: Recklessness is the fault element for paragraph (2A)(b)—see section 5.6 of the Criminal Code.</p> <p><i>Exceptions</i></p> <p>(3) Subsections (1) to (2A) do not apply if the disclosure was:</p> <p>(a) in connection with the administration or execution of this Division; or</p> <p>(b) for the purposes of any legal proceedings arising out of or otherwise related to this Division or of any report of any such proceedings; or</p> <p>(c) in accordance with any requirement imposed by law; or</p> <p>(d) in connection with the performance of functions or duties, or the exercise of powers, of the Organisation; or</p> <p>(e) for the purpose of obtaining legal advice in relation to the special intelligence operation; or</p> <p>(f) to an IGIS official for the purpose of the Inspector-General of Intelligence and Security exercising powers, or performing functions or duties, under the Inspector-General of Intelligence and Security Act 1986; or</p> <p>(g) by an IGIS official in connection with the IGIS official exercising powers, or performing functions or duties, under that Act.</p> <p>Note: A defendant bears an evidential burden in relation to the matters in this subsection—see subsection 13.3(3) of the Criminal Code.</p> <p>(3A) Subsections (2) and (2A) do not apply to a person disclosing information if:</p> <p>(a) the information has already been communicated, or made available, to the public (the prior publication); and</p> <p>(b) the person was not involved in the prior publication (whether directly or indirectly); and</p> <p>(c) at the time of the disclosure, the person believes that the disclosure:</p> <p>(i) will not endanger the health or safety of any person; and</p> <p>(ii) will not prejudice the effective conduct of a special intelligence operation; and</p> <p>(d) having regard to the nature, extent and place of the prior publication, the person has reasonable grounds for that belief.</p> <p>Note: A defendant bears an evidential burden in relation to the matters in subsection (3A)—see subsection 13.3(3) of the Criminal Code.</p> <p><u>(3B) Subsections (1), (1B), (2) and (2A) do not apply to a person who communicates, removes, holds or otherwise deals with 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 and documentary media, and:</u></p> <p>(a) <u>at that time, the person believed that engaging in that conduct was in the public interest; or</u></p> <p>(b) <u>the person:</u></p> <p>(i) <u>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 and documentary media; and</u></p> <p>(ii) <u>acted under the direction of a journalist, editor or lawyer who was also a member of the staff of the entity, and who believed that engaging in that conduct was in the public interest.</u></p> <p><u>(3C) In a prosecution for an offence against subsections (1) to (2A), the defendant does not bear an evidential burden in relation to the matters in subsection (3B), despite subsection 13.3(3) of the Criminal Code.</u></p> <p><i>Extended geographical jurisdiction</i></p> <p>(4) Section 15.4 of the Criminal Code (extended geographical jurisdiction—category D) applies to an offence against subsection (1), (1B), (2) or (2A).</p>

Section	Current Provision	Redrafted Provision with Exception
		(5) Subsection (4) does not, by implication, affect the interpretation of any other provision of this Act.
Criminal Code Act 1995 (Cth)		
Part 5.2: Espionage and related offences		
Division 90—Preliminary		
Section 90.1: Definitions	<p>(1) In this Part:</p> <p>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.</p> <p>article includes any thing, substance or material.</p> <p>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.</p> <p>deal: a person deals with information or an article if the person does any of the following in relation to the information or article:</p> <ul style="list-style-type: none"> (a) receives or obtains it; (b) collects it; (c) possesses it; (d) makes a record of it; (e) copies it; (f) alters it; (g) conceals it; (h) communicates it; (i) publishes it; (j) makes it available. <p>Note: See also the definition of make available in this subsection and subsection (2).</p> <p>foreign government principal has the meaning given by section 90.3.</p> <p>foreign political organisation includes:</p> <ul style="list-style-type: none"> (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. <p>foreign principal has the meaning given by section 90.2.</p> <p>information means information of any kind, whether true or false and whether in a material form or not, and includes:</p> <ul style="list-style-type: none"> (a) an opinion; and (b) a report of a conversation. <p>make available information or an article includes:</p> <ul style="list-style-type: none"> (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). <p>national security has the meaning given by section 90.4.</p> <p>prejudice: embarrassment alone is not sufficient to prejudice Australia’s national security.</p> <p>record, in relation to information, means a record of information in any form, including but not limited to, a</p>	<p>No amendment.</p>

Section	Current Provision	Redrafted Provision with Exception
	<p>document, paper, database, software system or other article or system containing information or from which information can be derived.</p> <p>security classification has the meaning given by section 90.5.</p> <p>sketch includes a representation of a place or thing.</p> <p>(2) In this Part, dealing with information or an article includes:</p> <ul style="list-style-type: none"> (a) dealing with all or part of the information or article; and (b) dealing only with the substance, effect or description of the information or article. <p>[NB: There is no subsection (3)]</p> <p>(4) This Part applies to and in relation to a document or article regardless of who made it and what information it contains.</p>	
<p>Section 90.2: Definition of foreign principal</p>	<p>Each of the following is a foreign principal:</p> <ul style="list-style-type: none"> (a) a foreign government principal; (aa) a foreign political organisation; (b) a public international organisation within the meaning of Division 70 (see section 70.1); (c) a terrorist organisation within the meaning of Division 102 (see section 102.1); (d) an entity or organisation owned, directed or controlled by a foreign principal within the meaning of paragraph (aa), (b) or (c); (e) an entity or organisation owned, directed or controlled by 2 or more foreign principals within the meaning of paragraph (a), (aa), (b) or (c). 	<p>No amendment.</p>
<p>Section 90.3: Definition of foreign government principal</p>	<p>Each of the following is a foreign government principal:</p> <ul style="list-style-type: none"> (a) the government of a foreign country or of part of a foreign country; (b) an authority of the government of a foreign country; (c) an authority of the government of part of a foreign country; (d) a foreign local government body or foreign regional government body; (e) a company to which any of the subparagraphs of paragraph (a) of the definition of foreign public enterprise in section 70.1 applies; (f) a body or association to which either of the subparagraphs of paragraph (b) of the definition of foreign public enterprise in section 70.1 applies; <p>[NB: There is no subsection (g)]</p> <ul style="list-style-type: none"> (h) an entity or organisation owned, directed or controlled: <ul style="list-style-type: none"> (i) by a foreign government principal within the meaning of any other paragraph of this definition; or (ii) by 2 or more such foreign government principals that are foreign government principals in relation to the same foreign country. 	<p>No amendment.</p>
<p>Section 90.4: Definition of national security</p>	<p>(1) The national security of Australia or a foreign country means any of the following:</p> <ul style="list-style-type: none"> (a) the defence of the country; (b) the protection of the country or any part of it, or the people of the country or any part of it, from activities covered by subsection (2); (c) the protection of the integrity of the country's territory and borders from serious threats; (d) the carrying out of the country's responsibilities to any other country in relation to the matter mentioned in paragraph (c) or an activity covered by subsection (2); (e) the country's political, military or economic relations with another country or other countries. <p>(2) For the purposes of subsection (1), this subsection covers the following activities relating to a country, whether or not directed from, or committed within, the country:</p>	<p>No amendment.</p>

Section	Current Provision	Redrafted Provision with Exception
	<ul style="list-style-type: none"> (a) espionage; (b) sabotage; (c) terrorism; (d) political violence; (e) activities intended and likely to obstruct, hinder or interfere with the performance by the country's defence force of its functions or with the carrying out of other activities by or for the country for the purposes of its defence or safety; (f) foreign interference. 	
<p>Section 90.5: Definition of security classification</p>	<p>(1) Security classification means:</p> <ul style="list-style-type: none"> (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: <ul style="list-style-type: none"> (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. <p>(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:</p> <ul style="list-style-type: none"> (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). <p>(2) Before the Governor-General makes regulations for the purposes of subsection (1), the Minister must be satisfied that the regulations are not inconsistent with the policy framework mentioned in paragraph (1)(a).</p> <p>(3) Despite subsection 14(2) of the Legislation Act 2003, regulations made for the purposes of subsection (1) of this section may prescribe a matter by applying, adopting or incorporating any matter contained in an instrument or other writing as in force or existing from time to time, if the instrument or other writing is publicly available.</p>	<p>No amendment.</p>
<p>Section 90.6: Expressions also used in the Australian Security Intelligence Organisation Act 1979</p>	<p>The meaning of an expression in this Part does not affect the meaning of that expression in the <i>Australian Security Intelligence Organisation Act 1979</i>, unless that Act expressly provides otherwise.</p>	<p>No amendment.</p>
Division 91—Espionage		
Subdivision A—Espionage		
<p>Section 91.1: Espionage—dealing with information etc. concerning national security which is or will be communicated or made available to foreign principal</p>	<p><i>Intention as to national security</i></p> <p>(1) A person commits an offence if:</p> <ul style="list-style-type: none"> (a) the person deals with information or an article; and (b) the information or article: <ul style="list-style-type: none"> (i) has a security classification; or (ii) concerns Australia's national security; and (c) the person intends that the person's conduct will: <ul style="list-style-type: none"> (i) prejudice Australia's national security; or 	<p>No amendment.</p>

Section	Current Provision	Redrafted Provision with Exception
	<p>(ii) advantage the national security of a foreign country; and</p> <p>(d) the conduct results or will result in the information or article being communicated or made available to a foreign principal or a person acting on behalf of a foreign principal.</p> <p>Note: An alternative verdict may be available for an offence against this subsection (see section 93.5).</p> <p>Penalty: Imprisonment for life.</p> <p><i>Reckless as to national security</i></p> <p>(2) A person commits an offence if:</p> <p>(a) the person deals with information or an article; and</p> <p>(b) the information or article:</p> <p>(i) has a security classification; or</p> <p>(ii) concerns Australia’s national security; and</p> <p>(c) the person is reckless as to whether the person’s conduct will:</p> <p>(i) prejudice Australia’s national security; or</p> <p>(ii) advantage the national security of a foreign country; and</p> <p>(d) the conduct results or will result in the information or article being communicated or made available to a foreign principal or a person acting on behalf of a foreign principal.</p> <p>Penalty: Imprisonment for 25 years.</p> <p><i>Other matters</i></p> <p>(4) For the purposes of subparagraphs (1)(c)(ii) and (2)(c)(ii), the person:</p> <p>(a) does not need to have in mind a particular foreign country; and</p> <p>(b) may have in mind more than one foreign country.</p> <p>(5) For the purposes of paragraphs (1)(d) and (2)(d), the person:</p> <p>(a) does not need to have in mind a particular foreign principal; and</p> <p>(b) may have in mind more than one foreign principal.</p>	
<p>Section 91.2: Espionage—dealing with information etc. which is or will be communicated or made available to foreign principal</p>	<p><i>Intention as to national security</i></p> <p>(1) A person commits an offence if:</p> <p>(a) the person deals with information or an article; and</p> <p>(b) the person intends that the person’s conduct will prejudice Australia’s national security; and</p> <p>(c) the conduct results or will result in the information or article being communicated or made available to a foreign principal or a person acting on behalf of a foreign principal.</p> <p>Note: An alternative verdict may be available for an offence against this subsection (see section 93.5).</p> <p>Penalty: Imprisonment for 25 years.</p> <p><i>Reckless as to national security</i></p> <p>(2) A person commits an offence if:</p> <p>(a) the person deals with information or an article; and</p> <p>(b) the person is reckless as to whether the person’s conduct will prejudice Australia’s national security; and</p> <p>(c) the conduct results or will result in the information or article being communicated or made available to a foreign principal or a person acting on behalf of a foreign principal.</p> <p>Penalty: Imprisonment for 20 years.</p> <p><i>Other matters</i></p> <p>(3) For the purposes of paragraphs (1)(c) and (2)(c):</p> <p>(a) the person does not need to have in mind a particular foreign principal; and</p>	<p>No amendment.</p>

Section	Current Provision	Redrafted Provision with Exception
<p>Section 91.3: Espionage—security classified information etc.</p>	<p>(b) the person may have in mind more than one foreign principal.</p> <p>(1) A person commits an offence if:</p> <ul style="list-style-type: none"> (a) the person deals with information or an article; and (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 (b) the person’s conduct results or will result in the information or article being communicated or made available to a foreign principal or a person acting on behalf of a foreign principal; and (c) the information or article has a security classification. <p>Penalty: Imprisonment for 20 years.</p> <p>(2) For the purposes of paragraphs (1)(aa) and (b):</p> <ul style="list-style-type: none"> (a) the person does not need to have in mind a particular foreign principal; and (b) the person may have in mind more than one foreign principal. <p>(3) Strict liability applies to paragraph (1)(aa).</p>	<p>No amendment.</p>
<p>Section 91.4: Defences</p>	<p>(1) It is a defence to a prosecution for an offence by a person against this Subdivision that the person dealt with the information or article:</p> <ul style="list-style-type: none"> (a) in accordance with a law of the Commonwealth; or (b) in accordance with an arrangement or agreement to which the Commonwealth is party and which allows for the exchange of information or articles; or (c) in the person’s capacity as a public official. <p>Note: A defendant bears an evidential burden in relation to the matter in this subsection (see subsection 13.3(3)).</p> <p>(2) It is a defence to a prosecution for an offence by a person against this Subdivision that the information or article the person deals with is information or an article that has already been communicated or made available to the public with the authority of the Commonwealth.</p> <p>Note: A defendant bears an evidential burden in relation to the matters in this subsection (see subsection 13.3(3)).</p> <p>(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:</p> <ul style="list-style-type: none"> (a) the person did not make or obtain the information or article by reason of any of the following: <ul style="list-style-type: none"> (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. <p>Note: A defendant bears an evidential burden in relation to the matters in this subsection (see subsection 13.3(3)).</p>	<p>Defences and Exception</p> <p>(1) It is a defence to a prosecution for an offence by a person against this Subdivision that the person dealt with the information or article:</p> <ul style="list-style-type: none"> (a) in accordance with a law of the Commonwealth; or (b) in accordance with an arrangement or agreement to which the Commonwealth is party and which allows for the exchange of information or articles; or (c) in the person’s capacity as a public official. <p>Note: A defendant bears an evidential burden in relation to the matter in this subsection (see subsection 13.3(3)).</p> <p>(2) It is a defence to a prosecution for an offence by a person against this Subdivision that the information or article the person deals with is information or an article that has already been communicated or made available to the public with the authority of the Commonwealth.</p> <p>Note: A defendant bears an evidential burden in relation to the matters in this subsection (see subsection 13.3(3)).</p> <p>(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:</p> <ul style="list-style-type: none"> (a) the person did not make or obtain the information or article by reason of any of the following: <ul style="list-style-type: none"> (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. <p>Note: A defendant bears an evidential burden in relation to the matters in this subsection (see subsection 13.3(3)).</p> <p><u>(4) Subsections 91.1, 91.2, and 91.3 do not apply to a person who communicates, removes, holds or otherwise deals with 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 and documentary media, and:</u></p> <ul style="list-style-type: none"> (a) <u>at that time, the person believed that engaging in that conduct was in the public interest; or</u>

Section	Current Provision	Redrafted Provision with Exception
		<p>(b) <u>the person:</u></p> <p>(i) <u>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 and documentary media; and</u></p> <p>(ii) <u>acted under the direction of a journalist, editor or lawyer who was also a member of the staff of the entity, and who believed that engaging in that conduct was in the public interest.</u></p> <p><u>(5) In a prosecution for an offence against subsections 91.1, 91.2, and 91.3, the defendant does not bear an evidential burden in relation to the matters in subsection (4), despite subsection 13.3(3) of the Criminal Code.</u></p>
<p>Section 91.5: Matters affecting sentencing for offence against subsection 91.1(1)</p>	<p>(1) In determining the sentence to be passed in respect of a person for an offence against subsection 91.1(1) (punishable by life imprisonment), the court must take into account any circumstances set out in paragraph 91.6(1)(b) that exist in relation to the commission of the offence.</p> <p>(2) However, the court need only take the circumstances into account so far as the circumstances are known to the court and relevant.</p> <p>(3) The circumstances are in addition to any other matters the court must take into account (for example, the matters mentioned in section 16A of the Crimes Act 1914).</p>	<p>No amendment.</p>
<p>Section 91.6: Aggravated espionage offence</p>	<p>(1) A person commits an offence against this section if:</p> <p>(a) the person commits an offence against section 91.1 (other than subsection 91.1(1)), 91.2 or 91.3 (the underlying offence); and</p> <p>(b) any of the following circumstances exist in relation to the commission of the underlying offence:</p> <p>[NB: There is no subsection (1)(i)]</p> <p>(ii) the person dealt with information or an article from a foreign intelligence agency;</p> <p>(iii) the person dealt with 5 or more records or articles each of which has a security classification;</p> <p>(iv) the person altered a record or article to remove or conceal its security classification;</p> <p>(v) at the time the person dealt with the information or article, the person held an Australian Government security clearance allowing access to information that has, or articles that have, a security classification of at least secret.</p> <p>Penalty:</p> <p>(a) if the penalty for the underlying offence is imprisonment for 25 years—imprisonment for life; or</p> <p>(b) if the penalty for the underlying offence is imprisonment for 20 years—imprisonment for 25 years.</p> <p>(2) There is no fault element for the physical element in paragraph (1)(a) other than the fault elements (however described), if any, for the underlying offence.</p> <p>[NB: There is no subsection (3)]</p> <p>(4) To avoid doubt, a person does not commit an underlying offence for the purposes of paragraph (1)(a) if the person has a defence to the underlying offence.</p> <p>(5) To avoid doubt, the person may be convicted of an offence against this section even if the person has not been convicted of the underlying offence.</p> <p>Note: An alternative verdict may be available for an offence against this section (see section 93.5).</p>	<p>(1) A person commits an offence against this section if:</p> <p>(a) the person commits an offence against section 91.1 (other than subsection 91.1(1)), 91.2 or 91.3 (the underlying offence); and</p> <p>(b) any of the following circumstances exist in relation to the commission of the underlying offence:</p> <p>[NB: There is no subsection (1)(i)]</p> <p>(ii) the person dealt with information or an article from a foreign intelligence agency;</p> <p>(iii) the person dealt with 5 or more records or articles each of which has a security classification;</p> <p>(iv) the person altered a record or article to remove or conceal its security classification;</p> <p>(v) at the time the person dealt with the information or article, the person held an Australian Government security clearance allowing access to information that has, or articles that have, a security classification of at least secret.</p> <p>Penalty:</p> <p>(a) if the penalty for the underlying offence is imprisonment for 25 years—imprisonment for life; or</p> <p>(b) if the penalty for the underlying offence is imprisonment for 20 years—imprisonment for 25 years.</p> <p>(2) There is no fault element for the physical element in paragraph (1)(a) other than the fault elements (however described), if any, for the underlying offence.</p> <p>[NB: There is no subsection (3)]</p> <p>(4) To avoid doubt, a person does not commit an underlying offence for the purposes of paragraph (1)(a) if the person has a defence to the underlying offence <u>or is a person referred to in paragraph (4) of section 91.4.</u></p> <p>(5) To avoid doubt, the person may be convicted of an offence against this section even if the person has not been convicted of the underlying offence.</p> <p>Note: An alternative verdict may be available for an offence against this section (see section 93.5).</p>
<p>Section 91.7: Geographical jurisdiction</p>	<p>Section 15.4 (extended geographical jurisdiction—category D) applies to an offence against this Subdivision.</p>	<p>No amendment.</p>
<p>Subdivision B—Espionage on behalf of foreign principal</p>		
<p>Section 91.8: Espionage on behalf of foreign principal</p>	<p><i>Intention as to national security</i></p> <p>(1) A person commits an offence if:</p> <p>(a) the person deals with information or an article; and</p>	<p>No amendment.</p>

Section	Current Provision	Redrafted Provision with Exception
	<p>(b) the person intends that the person’s conduct will:</p> <ul style="list-style-type: none"> (i) prejudice Australia’s national security; or (ii) advantage the national security of a foreign country; and <p>(c) the person is reckless as to whether the conduct involves the commission, by the person or any other person, of an offence against Subdivision A (espionage); and</p> <p>(d) any of the following circumstances exists:</p> <ul style="list-style-type: none"> (i) the conduct is engaged in on behalf of, or in collaboration with, a foreign principal or a person acting on behalf of a foreign principal; (ii) the conduct is directed, funded or supervised by a foreign principal or a person acting on behalf of a foreign principal. <p>Note: An alternative verdict may be available for an offence against this subsection (see section 93.5). Penalty: Imprisonment for 25 years.</p> <p><i>Reckless as to national security</i></p> <p>(2) A person commits an offence if:</p> <ul style="list-style-type: none"> (a) the person deals with information or an article; and (b) the person is reckless as to whether the person’s conduct will: <ul style="list-style-type: none"> (i) prejudice Australia’s national security; or (ii) advantage the national security of a foreign country; and (c) the person is reckless as to whether the conduct involves the commission, by the person or any other person, of an offence against Subdivision A (espionage); and (d) any of the following circumstances exists: <ul style="list-style-type: none"> (i) the conduct is engaged in on behalf of, or in collaboration with, a foreign principal or a person acting on behalf of a foreign principal; (ii) the conduct is directed, funded or supervised by a foreign principal or a person acting on behalf of a foreign principal. <p>Penalty: Imprisonment for 20 years.</p> <p><i>Conduct on behalf of foreign principal</i></p> <p>(3) A person commits an offence if:</p> <ul style="list-style-type: none"> (a) the person deals with information or an article; and (b) the person is reckless as to whether the person’s conduct involves the commission, by the person or any other person, of an offence against Subdivision A (espionage); and (c) any of the following circumstances exists: <ul style="list-style-type: none"> (i) the conduct is engaged in on behalf of, or in collaboration with, a foreign principal or a person acting on behalf of a foreign principal; (ii) the conduct is directed, funded or supervised by a foreign principal or a person acting on behalf of a foreign principal. <p>Penalty: Imprisonment for 15 years.</p> <p><i>Other matters</i></p> <p>(4) For the purposes of subparagraphs (1)(b)(ii) and (2)(b)(ii), the person:</p> <ul style="list-style-type: none"> (a) does not need to have in mind a particular foreign country; and (b) may have in mind more than one foreign country. <p>(5) For the purposes of paragraphs (1)(d), (2)(d) and (3)(c), the person:</p> <ul style="list-style-type: none"> (a) does not need to have in mind a particular foreign principal; and (b) may have in mind more than one foreign principal. 	

Section	Current Provision	Redrafted Provision with Exception
<p>Section 91.9: Defences</p>	<p>(1) It is a defence to a prosecution for an offence by a person against this Subdivision that the person dealt with the information or article:</p> <ul style="list-style-type: none"> (a) in accordance with a law of the Commonwealth; or (b) in accordance with an arrangement or agreement to which the Commonwealth is party and which allows for the exchange of information or articles; or (c) in the person's capacity as a public official. <p>Note: A defendant bears an evidential burden in relation to the matter in this subsection (see subsection 13.3(3)).</p> <p>(2) It is a defence to a prosecution for an offence by a person against this Subdivision that the information or article the person deals with is information or an article that has already been communicated or made available to the public with the authority of the Commonwealth.</p> <p>Note: A defendant bears an evidential burden in relation to the matters in this subsection (see subsection 13.3(3)).</p>	<p>Defences and Exception</p> <p>(1) It is a defence to a prosecution for an offence by a person against this Subdivision that the person dealt with the information or article:</p> <ul style="list-style-type: none"> (a) in accordance with a law of the Commonwealth; or (b) in accordance with an arrangement or agreement to which the Commonwealth is party and which allows for the exchange of information or articles; or (c) in the person's capacity as a public official. <p>Note: A defendant bears an evidential burden in relation to the matter in this subsection (see subsection 13.3(3)).</p> <p>(2) It is a defence to a prosecution for an offence by a person against this Subdivision that the information or article the person deals with is information or an article that has already been communicated or made available to the public with the authority of the Commonwealth.</p> <p>Note: A defendant bears an evidential burden in relation to the matters in this subsection (see subsection 13.3(3)).</p> <p><u>(3) Subsections 91.8(1), (2) and (3) do not apply to a person who communicates, removes, holds or otherwise deals with 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 and documentary media, and:</u></p> <ul style="list-style-type: none"> (a) <u>at that time, the person believed that engaging in that conduct was in the public interest; or</u> (b) <u>the person:</u> <ul style="list-style-type: none"> (i) <u>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 and documentary media; and</u> (ii) <u>acted under the direction of a journalist, editor or lawyer who was also a member of the staff of the entity, and who believed that engaging in that conduct was in the public interest.</u> <p><u>(4) In a prosecution for an offence against subsection 91.8, the defendant does not bear an evidential burden in relation to the matters in subsection (3), despite subsection 13.3(3) of the Criminal Code.</u></p>
<p>Section 91.10: Geographical jurisdiction</p>	<p>Section 15.4 (extended geographical jurisdiction—category D) applies to an offence against this Subdivision.</p>	<p>No amendment.</p>
<p>Section 91.12: Offence of preparing for an espionage offence</p>	<p>(1) A person commits an offence if:</p> <ul style="list-style-type: none"> (a) the person engages in conduct; and (b) the person does so with the intention of preparing for, or planning, an offence against Subdivision A (espionage) or B (espionage on behalf of foreign principal). <p>Penalty: Imprisonment for 15 years.</p> <p>(2) Section 11.1 (attempt) does not apply to an offence against subsection (1).</p> <p>(3) Subsection (1) applies:</p> <ul style="list-style-type: none"> (a) whether or not an offence against Subdivision A or B is committed; and (b) whether or not the person engages in the conduct in preparation for, or planning, a specific offence against a provision of Subdivision A or B; and (c) whether or not the person engages in the conduct in preparation for, or planning, more than one offence against Subdivision A or B. 	<p>No amendment.</p>
<p>Section 91.13: Defences</p>	<p>It is a defence to a prosecution for an offence by a person against this Subdivision that the person dealt with the information or article:</p> <ul style="list-style-type: none"> (a) in accordance with a law of the Commonwealth; or (b) in accordance with an arrangement or agreement to which the Commonwealth is party and which allows for the exchange of information or articles; or (c) in the person's capacity as a public official. 	<p>Defences and Exception</p> <p><u>(1) It is a defence to a prosecution for an offence by a person against this Subdivision that the person dealt with the information or article:</u></p> <ul style="list-style-type: none"> (a) in accordance with a law of the Commonwealth; or (b) in accordance with an arrangement or agreement to which the Commonwealth is party and which allows for the exchange of information or articles; or

Section	Current Provision	Redrafted Provision with Exception
	<p>Note: A defendant bears an evidential burden in relation to the matters in this section (see subsection 13.3(3)).</p>	<p>(c) in the person's capacity as a public official.</p> <p>Note: A defendant bears an evidential burden in relation to the matters in this section (see subsection 13.3(3)).</p> <p><u>(2) This subdivision does not apply to a person who communicates, removes, holds or otherwise deals with 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 and documentary media, and:</u></p> <p>(a) <u>at that time, the person believed that engaging in that conduct was in the public interest; or</u></p> <p>(b) <u>the person:</u></p> <p>(i) <u>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 and documentary media; and</u></p> <p>(ii) <u>acted under the direction of a journalist, editor or lawyer who was also a member of the staff of the entity, and who believed that engaging in that conduct was in the public interest.</u></p> <p><u>(3) In a prosecution for an offence against subsection 91.12, the defendant does not bear an evidential burden in relation to the matters in subsection (2), despite subsection 13.3(3) of the Criminal Code.</u></p>
<p>Section 91.14: Geographical jurisdiction</p>	<p>Section 15.4 (extended geographical jurisdiction—category D) applies to an offence against this Subdivision.</p>	<p>No amendment.</p>
<p>Division 92—Foreign interference</p>		
<p>Subdivision A—Preliminary</p>		
<p>Section 92.1: Definitions</p>	<p>In this Division:</p> <p>deception means an intentional or reckless deception, whether by words or other conduct, and whether as to fact or as to law, and includes:</p> <p>(a) a deception as to the intentions of the person using the deception or any other person; and</p> <p>(b) conduct by a person that causes a computer, a machine or an electronic device to make a response that the person is not authorised to cause it to do.</p> <p>menaces has the same meaning as in Part 7.5 (see section 138.2).</p>	<p>No amendment.</p>
<p>Subdivision B—Foreign interference</p>		
<p>Section 92.2: Offence of intentional foreign interference</p>	<p><i>Interference generally</i></p> <p>(1) A person commits an offence if:</p> <p>(a) the person engages in conduct; and</p> <p>(b) any of the following circumstances exists:</p> <p>(i) the person engages in the conduct on behalf of, or in collaboration with, a foreign principal or a person acting on behalf of a foreign principal;</p> <p>(ii) the conduct is directed, funded or supervised by a foreign principal or a person acting on behalf of a foreign principal; and</p> <p>(c) the person intends that the conduct will:</p> <p>(i) influence a political or governmental process of the Commonwealth or a State or Territory; or</p> <p>(ii) influence the exercise (whether or not in Australia) of an Australian democratic or political right or duty; or</p> <p>(iii) support intelligence activities of a foreign principal; or</p> <p>(iv) prejudice Australia's national security; and</p> <p>(d) any part of the conduct:</p> <p>(i) is covert or involves deception; or</p>	<p>No amendment.</p>

Section	Current Provision	Redrafted Provision with Exception
	<p>(ii) involves the person making a threat to cause serious harm, whether to the person to whom the threat is made or any other person; or</p> <p>(iii) involves the person making a demand with menaces.</p> <p>Note: An alternative verdict may be available for an offence against this subsection (see section 93.5).</p> <p>Penalty: Imprisonment for 20 years.</p> <p><i>Interference involving targeted person</i></p> <p>(2) A person commits an offence if:</p> <p>(a) the person engages in conduct; and</p> <p>(b) any of the following circumstances exists:</p> <p>(i) the conduct is engaged in on behalf of, or in collaboration with, a foreign principal or a person acting on behalf of a foreign principal;</p> <p>(ii) the conduct is directed, funded or supervised by a foreign principal or a person acting on behalf of a foreign principal; and</p> <p>(c) the person intends that the conduct will influence another person (the target):</p> <p>(i) in relation to a political or governmental process of the Commonwealth or a State or Territory; or</p> <p>(ii) in the target's exercise (whether or not in Australia) of any Australian democratic or political right or duty; and</p> <p>(d) the person conceals from, or fails to disclose to, the target the circumstance mentioned in paragraph (b).</p> <p>Note: An alternative verdict may be available for an offence against this subsection (see section 93.5).</p> <p>Penalty: Imprisonment for 20 years.</p> <p><i>Other matters</i></p> <p>(3) For the purposes of paragraphs (1)(b) and (2)(b):</p> <p>(a) the person does not need to have in mind a particular foreign principal; and</p> <p>(b) the person may have in mind more than one foreign principal.</p>	
<p>Section 92.3: Offence of reckless foreign interference</p>	<p>Interference generally</p> <p>(1) A person commits an offence if:</p> <p>(a) the person engages in conduct; and</p> <p>(b) any of the following circumstances exists:</p> <p>(i) the conduct is engaged in on behalf of, or in collaboration with, a foreign principal or a person acting on behalf of a foreign principal;</p> <p>(ii) the conduct is directed, funded or supervised by a foreign principal or a person acting on behalf of a foreign principal; and</p> <p>(c) the person is reckless as to whether the conduct will:</p> <p>(i) influence a political or governmental process of the Commonwealth or a State or Territory; or</p> <p>(ii) influence the exercise (whether or not in Australia) of an Australian democratic or political right or duty; or</p> <p>(iii) support intelligence activities of a foreign principal; or</p> <p>(iv) prejudice Australia's national security; and</p> <p>(d) any part of the conduct:</p> <p>(i) is covert or involves deception; or</p> <p>(ii) involves the person making a threat to cause serious harm, whether to the person to whom the threat is made or any other person; or</p>	<p>No amendment.</p>

Section	Current Provision	Redrafted Provision with Exception
	<p>(iii) involves the person making a demand with menaces.</p> <p>Penalty: Imprisonment for 15 years.</p> <p><i>Interference involving targeted person</i></p> <p>(2) A person commits an offence if:</p> <ul style="list-style-type: none"> (a) the person engages in conduct; and (b) any of the following circumstances exists: <ul style="list-style-type: none"> (i) the conduct is engaged in on behalf of, or in collaboration with, a foreign principal or a person acting on behalf of a foreign principal; (ii) the conduct is directed, funded or supervised by a foreign principal or a person acting on behalf of a foreign principal; and (c) the person is reckless as to whether the conduct will influence another person (the target): <ul style="list-style-type: none"> (i) in relation to a political or governmental process of the Commonwealth or a State or Territory; or (ii) in the target's exercise (whether or not in Australia) of any Australian democratic or political right or duty; and (d) the person conceals from, or fails to disclose to, the target the circumstance mentioned in paragraph (b). <p>Penalty: Imprisonment for 15 years.</p> <p><i>Other matters</i></p> <p>(3) For the purposes of paragraphs (1)(b) and (2)(b):</p> <ul style="list-style-type: none"> (a) the person does not need to have in mind a particular foreign principal; and (a) the person may have in mind more than one foreign principal. 	
<p>Section 92.4: Offence of preparing for a foreign interference offence</p>	<p>(1) A person commits an offence if:</p> <ul style="list-style-type: none"> (a) the person engages in conduct; and (b) the person does so with the intention of preparing for, or planning, an offence against another provision of this Subdivision (foreign interference). <p>Penalty: Imprisonment for 10 years.</p> <p>(2) Section 11.1 (attempt) does not apply to an offence against subsection (1).</p> <p>(3) Subsection (1) applies:</p> <ul style="list-style-type: none"> (a) whether or not an offence against this Subdivision is committed; and (b) whether or not the person engages in the conduct in preparation for, or planning, a specific offence against a provision of this Subdivision; and (c) whether or not the person engages in the conduct in preparation for, or planning, more than one offence against this Subdivision. 	<p>No amendment.</p>
<p>Section 92.5: Defence</p>	<p>It is a defence to a prosecution for an offence by a person against this Subdivision that the person engaged in the conduct:</p> <ul style="list-style-type: none"> (a) in accordance with a law of the Commonwealth; or (b) in accordance with an arrangement or agreement to which the Commonwealth is party; or (c) in the person's capacity as a public official. <p>Note: A defendant bears an evidential burden in relation to the matters in this section (see subsection 13.3(3)).</p>	<p>Defence and Exception</p> <p><u>(1)</u> It is a defence to a prosecution for an offence by a person against this Subdivision that the person engaged in the conduct:</p> <ul style="list-style-type: none"> (a) in accordance with a law of the Commonwealth; or (b) in accordance with an arrangement or agreement to which the Commonwealth is party; or (c) in the person's capacity as a public official. <p>Note: A defendant bears an evidential burden in relation to the matters in this section (see subsection 13.3(3)).</p> <p><u>(2) This Subdivision does not apply to a person who engages in conduct 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 and</u></p>

Section	Current Provision	Redrafted Provision with Exception
		<p><u>documentary media, and:</u></p> <p>(a) <u>at that time, the person believed that engaging in that conduct was in the public interest; or</u></p> <p>(b) <u>the person:</u></p> <p>(i) <u>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 and documentary media; and</u></p> <p>(ii) <u>acted under the direction of a journalist, editor or lawyer who was also a member of the staff of the entity, and who believed that engaging in that conduct was in the public interest.</u></p> <p><u>(3) In a prosecution for an offence against this Subdivision, the defendant does not bear an evidential burden in relation to the matters in subsection (2), despite subsection 13.3(3) of the Criminal Code.</u></p>
Section 92.6: Geographical jurisdiction	Section 15.2 (extended geographical jurisdiction—category B) applies to an offence against this Subdivision.	No amendment.
Subdivision C—Foreign interference involving foreign intelligence agencies		
Section 92.7: Knowingly supporting foreign intelligence agency	<p>A person commits an offence if:</p> <p>(a) the person provides resources, or material support, to an organisation or a person acting on behalf of an organisation; and</p> <p>(b) the person knows that the organisation is a foreign intelligence agency.</p> <p>Note: An alternative verdict may be available for an offence against this section (see section 93.5).</p> <p>Penalty: Imprisonment for 15 years.</p>	No amendment.
Section 92.8: Recklessly supporting foreign intelligence agency	<p>A person commits an offence if:</p> <p>(a) the person provides resources, or material support, to an organisation or a person acting on behalf of an organisation; and</p> <p>(b) the organisation is a foreign intelligence agency.</p> <p>Penalty: Imprisonment for 10 years.</p>	No amendment.
Section 92.9: Knowingly funding or being funded by foreign intelligence agency	<p>A person commits an offence if:</p> <p>(a) the person:</p> <p>(i) directly or indirectly receives or obtains funds from, or directly or indirectly makes funds available to, an organisation or a person acting on behalf of an organisation; or</p> <p>(ii) directly or indirectly collects funds for or on behalf of an organisation or a person acting on behalf of an organisation; and</p> <p>(b) the person knows that the organisation is a foreign intelligence agency.</p> <p>Note: An alternative verdict may be available for an offence against this section (see section 93.5).</p> <p>Penalty: Imprisonment for 15 years</p>	No amendment.
Section 92.10: Recklessly funding or being funded by foreign intelligence agency	<p>A person commits an offence if:</p> <p>(a) the person:</p> <p>(i) directly or indirectly receives or obtains funds from, or directly or indirectly makes funds available to, an organisation or a person acting on behalf of an organisation; or</p> <p>(ii) directly or indirectly collects funds for or on behalf of an organisation or a person acting on behalf of an organisation; and</p> <p>(b) the organisation is a foreign intelligence agency.</p> <p>Penalty: Imprisonment for 10 years.</p>	No amendment.
Division 92A—Theft of trade secrets involving foreign government principal		

Section	Current Provision	Redrafted Provision with Exception
<p>Section 92A.1: Theft of trade secrets involving foreign government principal</p>	<p>(1) A person commits an offence if:</p> <ul style="list-style-type: none"> (a) the person dishonestly receives, obtains, takes, copies or duplicates, sells, buys or discloses information; and (b) all of the following circumstances exist: <ul style="list-style-type: none"> (i) the information is not generally known in trade or business, or in the particular trade or business concerned; (ii) the information has a commercial value that would be, or could reasonably be expected to be, destroyed or diminished if the information were communicated; (iii) the owner of the information has made reasonable efforts in the circumstances to prevent the information becoming generally known; and (c) any of the following circumstances exists: <ul style="list-style-type: none"> (i) the conduct is engaged in on behalf of, or in collaboration with, a foreign government principal or a person acting on behalf of a foreign government principal; (ii) the conduct is directed, funded or supervised by a foreign government principal or a person acting on behalf of a foreign government principal. <p>Penalty: Imprisonment for 15 years.</p> <p>(2) For the purposes of paragraph (1)(a), dishonest means: dishonest according to the standards of ordinary people; and known by the defendant to be dishonest according to the standards of ordinary people.</p> <p>(3) In a prosecution for an offence against this section, the determination of dishonesty is a matter for the trier of fact.</p> <p>(4) For the purposes of paragraph (1)(c):</p> <ul style="list-style-type: none"> (a) the person does not need to have in mind a particular foreign government principal; and (b) the person may have in mind more than one foreign government principal. 	<p>(1) A person commits an offence if:</p> <ul style="list-style-type: none"> (a) the person dishonestly receives, obtains, takes, copies or duplicates, sells, buys or discloses information; and (b) all of the following circumstances exist: <ul style="list-style-type: none"> (i) the information is not generally known in trade or business, or in the particular trade or business concerned; (ii) the information has a commercial value that would be, or could reasonably be expected to be, destroyed or diminished if the information were communicated; (iii) the owner of the information has made reasonable efforts in the circumstances to prevent the information becoming generally known; and (c) any of the following circumstances exists: <ul style="list-style-type: none"> (i) the conduct is engaged in on behalf of, or in collaboration with, a foreign government principal or a person acting on behalf of a foreign government principal; (ii) the conduct is directed, funded or supervised by a foreign government principal or a person acting on behalf of a foreign government principal. <p>Penalty: Imprisonment for 15 years.</p> <p>(2) For the purposes of paragraph (1)(a), dishonest means: dishonest according to the standards of ordinary people; and known by the defendant to be dishonest according to the standards of ordinary people.</p> <p>(3) In a prosecution for an offence against this section, the determination of dishonesty is a matter for the trier of fact.</p> <p>(4) For the purposes of paragraph (1)(c):</p> <ul style="list-style-type: none"> (a) the person does not need to have in mind a particular foreign government principal; and (b) the person may have in mind more than one foreign government principal. <p><u>(5) Subsection 92A.1(1) does not apply to a person who communicates, removes, holds or otherwise deals with 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 and documentary media, and:</u></p> <ul style="list-style-type: none"> (a) <u>at that time, the person believed that engaging in that conduct was in the public interest; or</u> (b) <u>the person:</u> <ul style="list-style-type: none"> (i) <u>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 and documentary media; and</u> (ii) <u>acted under the direction of a journalist, editor or lawyer who was also a member of the staff of the entity, and who believed that engaging in that conduct was in the public interest.</u> <p><u>(6) In a prosecution for an offence against subsection 92A.1(1), the defendant does not bear an evidential burden in relation to the matters in subsection (5), despite subsection 13.3(3) of the Criminal Code.</u></p>
<p>Section 92A.2: Geographical jurisdiction</p>	<p>(1) Section 15.2 (extended geographical jurisdiction—category B) applies to an offence against section 92A.1.</p> <p>(2) However, subsections 15.2(2) and 15.2(4) (defences for primary and ancillary offences) do not apply.</p>	<p>No amendment.</p>
Division 93—Prosecutions and hearings		
<p>Section 93.1: Consent of Attorney-General required for prosecutions</p>	<p>(1) Proceedings for the commitment of a person for trial for an offence against this Part must not be instituted without:</p> <ul style="list-style-type: none"> (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. 	<p>No amendment.</p>

Section	Current Provision	Redrafted Provision with Exception						
	<p>(2) However, the following steps may be taken (but no further steps in proceedings may be taken) without consent or certification having been obtained:</p> <ul style="list-style-type: none"> (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. <p>(3) Nothing in subsection (2) prevents the discharge of the accused if proceedings are not continued within a reasonable time.</p> <p>(4) In deciding whether to consent, the Attorney-General must consider whether the conduct might be authorised:</p> <ul style="list-style-type: none"> (a) for an offence against Subdivision A of Division 91 (espionage)—in a way mentioned in section 91.4; and (b) for an offence against Subdivision B of Division 91 (espionage on behalf of foreign principal)—in a way mentioned in section 91.9; and (c) for an offence against Subdivision B of Division 92 (foreign interference)—in a way mentioned in section 92.5; and (d) for an offence against Subdivision C of Division 92 (foreign interference involving foreign intelligence agencies)—in a way mentioned in section 92.11. 							
<p>Section 93.2: Hearing in camera etc.</p>	<p>(1) This section applies to a hearing of an application or other proceedings before a federal court, a court exercising federal jurisdiction or a court of a Territory, whether under this Act or otherwise.</p> <p>(2) At any time before or during the hearing, the judge or magistrate, or other person presiding or competent to preside over the proceedings, may, if satisfied that it is in the interests of Australia's national security:</p> <ul style="list-style-type: none"> (a) order that some or all of the members of the public be excluded during the whole or a part of the hearing; or (b) order that no report of the whole or a specified part of, or relating to, the application or proceedings be published; or (c) make such order and give such directions as he or she thinks necessary for ensuring that no person, without the approval of the court, has access (whether before, during or after the hearing) to any affidavit, exhibit, information or other document used in the application or the proceedings that is on the file in the court or in the records of the court. <p>(3) A person commits an offence if the person contravenes an order made or direction given under this section.</p> <p>Penalty: Imprisonment for 5 years.</p>	<p>No amendment.</p>						
<p>Section 93.4: Fault elements for attempted espionage offences</p>	<p>Despite subsection 11.1(3), the fault element, in relation to each physical element of an offence of attempting to commit an offence against a provision of:</p> <ul style="list-style-type: none"> (a) Subdivision A of Division 91 (espionage); or (b) Subdivision B of Division 91 (espionage on behalf of foreign principal); <p>is the fault element in relation to that physical element of the offence against the provision of Subdivision A or B of Division 91.</p>	<p>No amendment.</p>						
<p>Section 93.5: Alternative verdicts</p>	<p>(1) If, on a trial of a person for an offence specified in column 1 of an item in the following table, the trier of fact:</p> <ul style="list-style-type: none"> (a) is not satisfied that the person is guilty of that offence; and (b) is satisfied beyond reasonable doubt that the person is guilty of an offence against a provision specified in column 2 of that item; <p>it may find the person not guilty of the offence specified in column 1 but guilty of the offence specified in column 2.</p> <p>Alternative verdicts</p> <table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="text-align: left;">Item</th> <th style="text-align: left;">Column 1 For an offence against:</th> <th style="text-align: left;">Column 2 The alternative verdict is an offence against:</th> </tr> </thead> <tbody> <tr> <td style="text-align: center;">1</td> <td>subsection 91.1(1)</td> <td>subsection 91.1(2)</td> </tr> </tbody> </table>	Item	Column 1 For an offence against:	Column 2 The alternative verdict is an offence against:	1	subsection 91.1(1)	subsection 91.1(2)	<p>No amendment.</p>
Item	Column 1 For an offence against:	Column 2 The alternative verdict is an offence against:						
1	subsection 91.1(1)	subsection 91.1(2)						

Section	Current Provision	Redrafted Provision with Exception
	<p>2 subsection 91.2(1) subsection 91.2(2)</p> <p>3 subsection 91.6(1) the underlying offence mentioned in paragraph 91.6(1)(a)</p> <p>4 subsection 91.8(1) subsection 91.8(2)</p> <p>5 subsection 92.2(1) subsection 92.3(1)</p> <p>6 subsection 92.2(2) subsection 92.3(2)</p> <p>7 section 92.7 section 92.8</p> <p>8 section 92.9 section 92.10</p> <p>(2) Subsection (1) only applies if the person has been accorded procedural fairness in relation to the finding of guilt for the offence specified in column 2.</p>	
Division 94—Forfeiture		
Section 94.1: Forfeiture of articles etc.	A sketch, article, record or document which is dealt with in contravention of this Part is forfeited to the Commonwealth.	No amendment.
Part 5.6: Secrecy of Information		
Division 121: Preliminary		
Section 121.1: Definitions	<p>(1) In this Part:</p> <p>cause harm to Australia's interests means to:</p> <ul style="list-style-type: none"> (a) interfere with or prejudice the prevention, detection, investigation, prosecution or punishment of a criminal offence against a law of the Commonwealth; or (a) interfere with or prejudice the performance of functions of the Australian Federal Police under: <ul style="list-style-type: none"> (i) paragraph 8(1)(be) of the <i>Australian Federal Police Act 1979</i> (protective and custodial functions); or (ii) the <i>Proceeds of Crime Act 2002</i>; or (b) harm or prejudice Australia's international relations in relation to information that was communicated in confidence: <ul style="list-style-type: none"> (i) by, or on behalf of, the government of a foreign country, an authority of the government of a foreign country or an international organisation; and (ii) to the Government of the Commonwealth, to an authority of the Commonwealth, or to a person receiving the communication on behalf of the Commonwealth or an authority of the Commonwealth; or (f) harm or prejudice the health or safety of the Australian public or a section of the Australian public; or (g) harm or prejudice the security or defence of Australia. <p>Commonwealth officer means any of the following:</p> <ul style="list-style-type: none"> (a) an APS employee; (b) an individual appointed or employed by the Commonwealth otherwise than under the <i>Public Service Act 1999</i>; (c) a member of the Australian Defence Force; (d) a member or special member of the Australian Federal Police; (e) an officer or employee of a Commonwealth authority; (f) an individual who is a contracted service provider for a Commonwealth contract; (g) an individual who is an officer or employee of a contracted service provider for a Commonwealth contract and who provides services for the purposes (whether direct or indirect) of the Commonwealth contract; 	No amendment.

Section	Current Provision	Redrafted Provision with Exception
	<p>but does not include an officer or employee of, or a person engaged by, the Australian Broadcasting Corporation or the Special Broadcasting Service Corporation.</p> <p>deal has the same meaning as in Part 5.2.</p> <p>Note: For the meaning of deal in that Part, see subsections 90.1(1) and (2).</p> <p>domestic intelligence agency means:</p> <ul style="list-style-type: none"> (a) the Australian Secret Intelligence Service; or (b) the Australian Security Intelligence Organisation; or (c) the Australian Geospatial-Intelligence Organisation; or (d) the Defence Intelligence Organisation; or (e) the Australian Signals Directorate; or (f) the Office of National Intelligence. <p>foreign military organisation means:</p> <ul style="list-style-type: none"> (a) the armed forces of the government of a foreign country; or (b) the civilian component of: <ul style="list-style-type: none"> (i) the Department of State of a foreign country; or (ii) a government agency in a foreign country; <p>that is responsible for the defence of the country.</p> <p>information has the meaning given by section 90.1.</p> <p>inherently harmful information means information that is any of the following:</p> <ul style="list-style-type: none"> (a) security classified information; (b) information that was obtained by, or made by or on behalf of, a domestic intelligence agency or a foreign intelligence agency in connection with the agency's functions; (e) information relating to the operations, capabilities or technologies of, or methods or sources used by, a domestic or foreign law enforcement agency. <p>international relations has the meaning given by section 10 of the <i>National Security Information (Criminal and Civil Proceedings) Act 2004</i>.</p> <p>proper place of custody has the meaning given by section 121.2.</p> <p>Regulatory Powers Act means the <i>Regulatory Powers (Standard Provisions) Act 2014</i>.</p> <p>security classification has the meaning given by section 90.5.</p> <p>security classified information means information that has a security classification.</p> <p>security or defence of Australia includes the operations, capabilities or technologies of, or methods or sources used by, domestic intelligence agencies or foreign intelligence agencies.</p> <p>(2) To avoid doubt, communicate includes publish and make available.</p> <p>(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:</p> <ul style="list-style-type: none"> (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). <p>Note: See the definitions of security classified information in subsection (1) and security classification in section 90.5.</p>	
<p>Section 121.2: Definitions of proper place of custody</p>	<p>(1) Proper place of custody has the meaning prescribed by the regulations.</p> <p>(2) Despite subsection 14(2) of the <i>Legislation Act 2003</i>, regulations made for the purposes of subsection (1) of this section may prescribe a matter by applying, adopting or incorporating any matter contained in an instrument or other</p>	<p>No amendment.</p>

Section	Current Provision	Redrafted Provision with Exception
	writing as in force or existing from time to time, if the instrument or other writing is publicly available.	
Division 122: Secrecy of information		
<p>Section 122.1: Communication and other dealings with inherently harmful information by current and former Commonwealth officers etc.</p>	<p><i>Communication of inherently harmful information</i></p> <p>(1) A person commits an offence if:</p> <ul style="list-style-type: none"> (a) the person communicates information; and (b) the information is inherently harmful information; and (c) the information was made or obtained by that person by reason of his or her being, or having been, a Commonwealth officer or otherwise engaged to perform work for a Commonwealth entity. <p>Note 1: For exceptions to the offences in this section, see section 122.5.</p> <p>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).</p> <p>Penalty: Imprisonment for 7 years.</p> <p><i>Other dealings with inherently harmful information</i></p> <p>(2) A person commits an offence if:</p> <ul style="list-style-type: none"> (a) the person deals with information (other than by communicating it); and (b) the information is inherently harmful information; and (c) the information was made or obtained by that person by reason of his or her being, or having been, a Commonwealth officer or otherwise engaged to perform work for a Commonwealth entity. <p>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).</p> <p>Penalty: Imprisonment for 3 years.</p> <p><i>Information removed from, or held outside, proper place of custody</i></p> <p>(3) A person commits an offence if:</p> <ul style="list-style-type: none"> (a) the person: <ul style="list-style-type: none"> (i) removes information from a proper place of custody for the information; or (ii) holds information outside a proper place of custody for the information; and (b) the information is inherently harmful information; and (c) the information was made or obtained by that person by reason of his or her being, or having been, a Commonwealth officer or otherwise engaged to perform work for a Commonwealth entity. <p>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).</p> <p>Penalty: Imprisonment for 3 years.</p> <p><i>Failure to comply with direction regarding information</i></p> <p>(4) A person commits an offence if:</p> <ul style="list-style-type: none"> (a) the person is given a direction; and (b) the direction is a lawful direction regarding the retention, use or disposal of information; and (c) the person fails to comply with the direction; and (ca) the failure to comply with the direction results in a risk to the security of the information; and (d) the information is inherently harmful information; and (e) the information was made or obtained by that person by reason of his or her being, or having been, 	<p>No amendment.</p>

Section	Current Provision	Redrafted Provision with Exception
	<p>a Commonwealth officer or otherwise engaged to perform work for a Commonwealth entity.</p> <p>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).</p> <p>Penalty: Imprisonment for 3 years.</p>	
<p>Section 122.2: Conduct by current and former Commonwealth officers etc. causing harm to Australia's interests</p>	<p><i>Communication causing harm to Australia's interests</i></p> <p>(1) A person commits an offence if:</p> <ul style="list-style-type: none"> (a) the person communicates information; and (b) either: <ul style="list-style-type: none"> (i) the communication causes harm to Australia's interests; or (ii) the communication will or is likely to cause harm to Australia's interests; and (c) the information was made or obtained by that person by reason of his or her being, or having been, a Commonwealth officer or otherwise engaged to perform work for a Commonwealth entity. <p>Note 1: For the definition of <i>cause harm to Australia's interests</i>, see section 121.1.</p> <p>Note 2: For exceptions to the offences in this section, see section 122.5.</p> <p>Penalty: Imprisonment for 7 years.</p> <p><i>Other conduct causing harm to Australia's interests</i></p> <p>(2) A person commits an offence if:</p> <ul style="list-style-type: none"> (a) the person deals with information (other than by communicating it); and (b) either: <ul style="list-style-type: none"> (i) the dealing causes harm to Australia's interests; or (ii) the dealing will or is likely to cause harm to Australia's interests; and (c) the information was made or obtained by that person by reason of his or her being, or having been, a Commonwealth officer or otherwise engaged to perform work for a Commonwealth entity. <p>Penalty: Imprisonment for 3 years.</p> <p><i>Information removed from, or held outside, proper place of custody</i></p> <p>(3) A person commits an offence if:</p> <ul style="list-style-type: none"> (a) the person: <ul style="list-style-type: none"> (i) removes information from a proper place of custody for the information; or (ii) holds information outside a proper place of custody for the information; and (b) either: <ul style="list-style-type: none"> (i) the removal or holding causes harm to Australia's interests; or (ii) the removal or holding will or is likely to cause harm to Australia's interests; and (c) the information was made or obtained by that person by reason of his or her being, or having been, a Commonwealth officer or otherwise engaged to perform work for a Commonwealth entity. <p>Penalty: Imprisonment for 3 years.</p> <p><i>Failure to comply with direction regarding information</i></p> <p>(4) A person commits an offence if:</p> <ul style="list-style-type: none"> (a) the person is given a direction; and (b) the direction is a lawful direction regarding the retention, use or disposal of information; and (c) the person fails to comply with the direction; and 	<p>No amendment.</p>

Section	Current Provision	Redrafted Provision with Exception
	<p>(d) either:</p> <p>(i) the failure to comply causes harm to Australia's interests; or</p> <p>(ii) the failure to comply will or is likely to cause harm to Australia's interests; and</p> <p>(e) the information was made or obtained by that person by reason of his or her being, or having been, a Commonwealth officer or otherwise engaged to perform work for a Commonwealth entity.</p> <p>Penalty: Imprisonment for 3 years.</p>	
<p>Section 122.3: Aggravated offence</p>	<p>(1) A person commits an offence against this section if:</p> <p>(a) the person commits an offence against section 122.1 or 122.2 (the <i>underlying offence</i>); and</p> <p>(b) any of the following circumstances exist in relation to the commission of the underlying offence:</p> <p>(ii) if the commission of the underlying offence involves a record—the record is marked with a code word, "for Australian eyes only" or as prescribed by the regulations for the purposes of this subparagraph;</p> <p>(iii) the commission of the underlying offence involves 5 or more records each of which has a security classification;</p> <p>(iv) the commission of the underlying offence involves the person altering a record to remove or conceal its security classification;</p> <p>(v) at the time the person committed the underlying offence, the person held an Australian Government security clearance allowing the person to access information that has a security classification of at least secret.</p> <p>Penalty:</p> <p>(a) if the penalty for the underlying offence is imprisonment for 7 years—imprisonment for 10 years; or</p> <p>(b) if the penalty for the underlying offence is imprisonment for 3 years—imprisonment for 5 years.</p> <p>(2) There is no fault element for the physical element in paragraph (1)(a) other than the fault elements (however described), if any, for the underlying offence.</p> <p>(4) To avoid doubt:</p> <p>(a) a person does not commit an underlying offence for the purposes of paragraph (1)(a) if the person has a defence to the underlying offence; and</p> <p>(b) a person may be convicted of an offence against this section even if the person has not been convicted of the underlying offence.</p>	<p>No amendment.</p>
<p>Section 122.4: Unauthorised disclosure of information by current and former Commonwealth officers etc.</p>	<p>(1) A person commits an offence if:</p> <p>(a) the person communicates information; and</p> <p>(b) the person made or obtained the information by reason of his or her being, or having been, a Commonwealth officer or otherwise engaged to perform work for a Commonwealth entity; and</p> <p>(c) the person is under a duty not to disclose the information; and</p> <p>(d) the duty arises under a law of the Commonwealth.</p> <p>Penalty: Imprisonment for 2 years.</p> <p>(2) Absolute liability applies in relation to paragraph (1)(d).</p> <p><i>Sunset provision</i></p> <p>(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.</p>	<p>No amendment.</p>
<p>Section 122.4A: Communicating and dealing with information by non-</p>	<p><i>Communication of information</i></p> <p>(1) A person commits an offence if:</p> <p>(a) the person communicates information; and</p> <p>(b) the information was not made or obtained by the person by reason of the person being, or having</p>	<p>No amendment.</p>

Section	Current Provision	Redrafted Provision with Exception
<p>Commonwealth officers etc.</p>	<p>been, a Commonwealth officer or otherwise engaged to perform work for a Commonwealth entity; and</p> <p>(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</p> <p>(d) any one or more of the following applies:</p> <p>(i) the information has a security classification of secret or top secret;</p> <p>(ii) the communication of the information damages the security or defence of Australia;</p> <p>(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;</p> <p>(iv) the communication of the information harms or prejudices the health or safety of the Australian public or a section of the Australian public.</p> <p>Note 1: For exceptions to the offences in this section, see section 122.5.</p> <p>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).</p> <p>Penalty: Imprisonment for 5 years.</p> <p><i>Other dealings with information</i></p> <p>(2) A person commits an offence if:</p> <p>(a) the person deals with information (other than by communicating it); and</p> <p>(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</p> <p>(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</p> <p>(d) any one or more of the following applies:</p> <p>(i) the information has a security classification of secret or top secret;</p> <p>(ii) the dealing with the information damages the security or defence of Australia;</p> <p>(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;</p> <p>(iv) the dealing with the information harms or prejudices the health or safety of the Australian public or a section of the Australian public.</p> <p>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).</p> <p>Penalty: Imprisonment for 2 years.</p> <p><i>Proof of identity not required</i></p> <p>(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).</p>	
<p>Section 122.5: Defences</p>	<p><i>Powers, functions and duties in a person's capacity as a public official etc. or under arrangement</i></p> <p>(1) It is a defence to a prosecution for an offence by a person against this Division that:</p> <p>(a) the person was exercising a power, or performing a function or duty, in the person's capacity as a public official or a person who is otherwise engaged to perform work for a Commonwealth entity; or</p> <p>(b) the person communicated, removed, held or otherwise dealt with the information in accordance with an arrangement or agreement to which the Commonwealth or a Commonwealth entity is party and</p>	<p>Defences and Exceptions</p> <p><i>Powers, functions and duties in a person's capacity as a public official etc. or under arrangement</i></p> <p>(1) It is a defence to a prosecution for an offence by a person against this Division that:</p> <p>(a) the person was exercising a power, or performing a function or duty, in the person's capacity as a public official or a person who is otherwise engaged to perform work for a Commonwealth entity; or</p>

Section	Current Provision	Redrafted Provision with Exception
	<p>which allows for the exchange of information.</p> <p>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)).</p> <p><i>Information that is already public</i></p> <p>(2) It is a defence to a prosecution for an offence by a person against this Division that the relevant information has already been communicated or made available to the public with the authority of the Commonwealth.</p> <p>Note: A defendant bears an evidential burden in relation to the matters in this subsection (see subsection 13.3(3)).</p> <p><i>Information communicated etc. to integrity agency</i></p> <p>(3) 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:</p> <ul style="list-style-type: none"> (a) to any of the following: <ul style="list-style-type: none"> (i) the Inspector-General of Intelligence and Security, or a person engaged or employed to assist the Inspector-General as described in subsection 32(1) of the <i>Inspector-General of Intelligence and Security Act 1986</i>; (ii) the Commonwealth Ombudsman, or another officer within the meaning of subsection 35(1) of the <i>Ombudsman Act 1976</i>; (ia) the Australian Information Commissioner, a member of the staff of the Office of the Australian Information Commissioner, or a consultant engaged under the <i>Australian Information Commissioner Act 2010</i>; (iii) the Law Enforcement Integrity Commissioner, a staff member of ACLEI, or a consultant to, or a person made available to, the Integrity Commissioner under the <i>Law Enforcement Integrity Commissioner Act 2006</i>; and (b) for the purpose of the Inspector-General, the Ombudsman, the Australian Information Commissioner or the Law Enforcement Integrity Commissioner (as the case requires) exercising a power, or performing a function or duty. <p>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)).</p> <p><i>Information communicated etc. in accordance with the Public Interest Disclosure Act 2013 or the Freedom of Information Act 1982</i></p> <p>(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:</p> <ul style="list-style-type: none"> (a) the <i>Public Interest Disclosure Act 2013</i>; or (b) the <i>Freedom of Information Act 1982</i>. <p>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)).</p> <p><i>Information communicated etc. for the purpose of reporting offences and maladministration</i></p> <p>(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:</p> <ul style="list-style-type: none"> (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: <ul style="list-style-type: none"> (i) the <i>Australian Federal Police Act 1979</i>; or (ii) the <i>Proceeds of Crime Act 2002</i>. 	<ul style="list-style-type: none"> (b) the person communicated, removed, held or otherwise dealt with the information in accordance with an arrangement or agreement to which the Commonwealth or a Commonwealth entity is party and which allows for the exchange of information. <p>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)).</p> <p><i>Information that is already public</i></p> <p>(2) It is a defence to a prosecution for an offence by a person against this Division that the relevant information has already been communicated or made available to the public with the authority of the Commonwealth.</p> <p>Note: A defendant bears an evidential burden in relation to the matters in this subsection (see subsection 13.3(3)).</p> <p><i>Information communicated etc. to integrity agency</i></p> <p>(3) 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:</p> <ul style="list-style-type: none"> (a) to any of the following: <ul style="list-style-type: none"> (i) the Inspector-General of Intelligence and Security, or a person engaged or employed to assist the Inspector-General as described in subsection 32(1) of the <i>Inspector-General of Intelligence and Security Act 1986</i>; (ii) the Commonwealth Ombudsman, or another officer within the meaning of subsection 35(1) of the <i>Ombudsman Act 1976</i>; (ia) the Australian Information Commissioner, a member of the staff of the Office of the Australian Information Commissioner, or a consultant engaged under the <i>Australian Information Commissioner Act 2010</i>; (iii) the Law Enforcement Integrity Commissioner, a staff member of ACLEI, or a consultant to, or a person made available to, the Integrity Commissioner under the <i>Law Enforcement Integrity Commissioner Act 2006</i>; and (b) for the purpose of the Inspector-General, the Ombudsman, the Australian Information Commissioner or the Law Enforcement Integrity Commissioner (as the case requires) exercising a power, or performing a function or duty. <p>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)).</p> <p><i>Information communicated etc. in accordance with the Public Interest Disclosure Act 2013 or the Freedom of Information Act 1982</i></p> <p>(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:</p> <ul style="list-style-type: none"> (a) the <i>Public Interest Disclosure Act 2013</i>; or (b) the <i>Freedom of Information Act 1982</i>. <p>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)).</p> <p><i>Information communicated etc. for the purpose of reporting offences and maladministration</i></p> <p>(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:</p> <ul style="list-style-type: none"> (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:

Section	Current Provision	Redrafted Provision with Exception
	<p>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)).</p> <p><i>Information communicated etc. to a court or tribunal</i></p> <p>(5) 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, to a court or tribunal (whether or not as a result of a requirement).</p> <p>Note: A defendant bears an evidential burden in relation to the matters in this subsection (see subsection 13.3(3)).</p> <p><i>Information communicated etc. for the purposes of obtaining or providing legal advice</i></p> <p>(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:</p> <ul style="list-style-type: none"> (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; <p>whether that advice was obtained or provided before or after the person engaged in the conduct constituting the offence.</p> <p>Note: A defendant bears an evidential burden in relation to the matters in this subsection (see subsection 13.3(3)).</p> <p><i>Information communicated etc. by persons engaged in business of reporting news etc.</i></p> <p>(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:</p> <ul style="list-style-type: none"> (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: <ul style="list-style-type: none"> (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)). <p>Note: A defendant bears an evidential burden in relation to the matters in this subsection (see subsection 13.3(3)).</p> <p>(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:</p> <ul style="list-style-type: none"> (a) engaging in that conduct would be an offence under section 92 of the <i>Australian Security Intelligence Organisation Act 1979</i> (publication of identity of ASIO employee or ASIO affiliate); or (b) engaging in that conduct would be an offence under section 41 of the <i>Intelligence Services Act 2001</i> (publication of identity of staff); or (c) engaging in that conduct would be an offence under section 22, 22A or 22B of the <i>Witness Protection Act 1994</i> (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. <p><i>Information that has been previously communicated</i></p> <p>(8) It is a defence to a prosecution for an offence by a person against this Division if:</p> <ul style="list-style-type: none"> (a) the person did not make or obtain the relevant information by reason of any of the following: <ul style="list-style-type: none"> (i) his or her being, or having been, a Commonwealth officer; (ii) his or her being otherwise engaged to perform work for a Commonwealth entity; 	<ul style="list-style-type: none"> (i) the <i>Australian Federal Police Act 1979</i>; or (ii) the <i>Proceeds of Crime Act 2002</i>. <p>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)).</p> <p><i>Information communicated etc. to a court or tribunal</i></p> <p>(5) 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, to a court or tribunal (whether or not as a result of a requirement).</p> <p>Note: A defendant bears an evidential burden in relation to the matters in this subsection (see subsection 13.3(3)).</p> <p><i>Information communicated etc. for the purposes of obtaining or providing legal advice</i></p> <p>(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:</p> <ul style="list-style-type: none"> (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; <p>whether that advice was obtained or provided before or after the person engaged in the conduct constituting the offence.</p> <p>Note: A defendant bears an evidential burden in relation to the matters in this subsection (see subsection 13.3(3)).</p> <p><i>Information communicated etc. by persons engaged in business of reporting news etc.</i></p> <p>(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 <u>This Division does not apply to a person who communicates, removes, holds or otherwise deals with</u> 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 and documentary media, and:</p> <ul style="list-style-type: none"> (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: <ul style="list-style-type: none"> (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 and documentary 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)). <p>Note: A defendant bears an evidential burden in relation to the matters in this subsection (see subsection 13.3(3)).</p> <p>(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:</p> <ul style="list-style-type: none"> (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. <p><u>(7A) In a prosecution for an offence under this Division, the defendant does not bear an evidential burden in relation to the matters in subsection (6), despite subsection 13.3(3) of the Criminal Code.</u></p>

Section	Current Provision	Redrafted Provision with Exception
	<p>(iii) an arrangement or agreement to which the Commonwealth or a Commonwealth entity is party and which allows for the exchange of information; and</p> <p>(b) the information has already been communicated, or made available, to the public (the prior publication); and</p> <p>(c) the person was not involved in the prior publication (whether directly or indirectly); and</p> <p>(d) at the time of the communication, removal, holding or dealing, the person believes that engaging in that conduct will not cause harm to Australia's interests or the security or defence of Australia; and</p> <p>(e) having regard to the nature, extent and place of the prior publication, the person has reasonable grounds for that belief.</p> <p>Note: A defendant bears an evidential burden in relation to the matters in this subsection (see subsection 13.3(3)).</p> <p><i>Information relating to a person etc.</i></p> <p>(9) It is a defence to a prosecution for an offence by a person against this Division if:</p> <p>(a) the person did not make or obtain the relevant information by reason of any of the following:</p> <p>(i) his or her being, or having been, a Commonwealth officer;</p> <p>(ii) his or her being otherwise engaged to perform work for a Commonwealth entity;</p> <p>(iii) an arrangement or agreement to which the Commonwealth or a Commonwealth entity is party and which allows for the exchange of information; and</p> <p>(b) at the time of the communication, removal, holding or dealing, the person believes that the making or obtaining of the information by the person was required or authorised by law; and</p> <p>(c) having regard to the circumstances of the making or obtaining of the information, the person has reasonable grounds for that belief; and</p> <p>(d) any of the following apply:</p> <p>(i) the person communicates the information to the person to whom the information relates;</p> <p>(ii) the person is the person to whom the information relates;</p> <p>(iii) the communication, removal, holding or dealing is in accordance with the express or implied consent of the person to whom the information relates.</p> <p>Note: A defendant bears an evidential burden in relation to the matters in this subsection (see subsection 13.3(3)).</p> <p>(10) To avoid doubt, a defence to an offence may constitute an authorisation for the purposes of paragraph (9)(b).</p> <p><i>Removing, holding or otherwise dealing with information for the purposes of communicating information</i></p> <p>(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.</p> <p><i>Burden of proof for integrity agency officials</i></p> <p>(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:</p> <p>(a) subsection (1), (4) or (4A); or</p> <p>(b) either of the following:</p> <p>(i) subparagraph (3)(a)(i), (ii), (iia) or (iii);</p> <p>(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.</p> <p><i>Defences do not limit each other</i></p> <p>(13) No defence in this section limits the operation of any other defence in this section.</p>	<p><i>Information that has been previously communicated</i></p> <p>(8) It is a defence to a prosecution for an offence by a person against this Division if:</p> <p>(a) the person did not make or obtain the relevant information by reason of any of the following:</p> <p>(i) his or her being, or having been, a Commonwealth officer;</p> <p>(ii) his or her being otherwise engaged to perform work for a Commonwealth entity;</p> <p>(iii) an arrangement or agreement to which the Commonwealth or a Commonwealth entity is party and which allows for the exchange of information; and</p> <p>(b) the information has already been communicated, or made available, to the public (the prior publication); and</p> <p>(c) the person was not involved in the prior publication (whether directly or indirectly); and</p> <p>(d) at the time of the communication, removal, holding or dealing, the person believes that engaging in that conduct will not cause harm to Australia's interests or the security or defence of Australia; and</p> <p>(e) having regard to the nature, extent and place of the prior publication, the person has reasonable grounds for that belief.</p> <p>Note: A defendant bears an evidential burden in relation to the matters in this subsection (see subsection 13.3(3)).</p> <p><i>Information relating to a person etc.</i></p> <p>(9) It is a defence to a prosecution for an offence by a person against this Division if:</p> <p>(a) the person did not make or obtain the relevant information by reason of any of the following:</p> <p>(i) his or her being, or having been, a Commonwealth officer;</p> <p>(ii) his or her being otherwise engaged to perform work for a Commonwealth entity;</p> <p>(iii) an arrangement or agreement to which the Commonwealth or a Commonwealth entity is party and which allows for the exchange of information; and</p> <p>(b) at the time of the communication, removal, holding or dealing, the person believes that the making or obtaining of the information by the person was required or authorised by law; and</p> <p>(c) having regard to the circumstances of the making or obtaining of the information, the person has reasonable grounds for that belief; and</p> <p>(d) any of the following apply:</p> <p>(i) the person communicates the information to the person to whom the information relates;</p> <p>(ii) the person is the person to whom the information relates;</p> <p>(iii) the communication, removal, holding or dealing is in accordance with the express or implied consent of the person to whom the information relates.</p> <p>Note: A defendant bears an evidential burden in relation to the matters in this subsection (see subsection 13.3(3)).</p> <p>(10) To avoid doubt, a defence to an offence may constitute an authorisation for the purposes of paragraph (9)(b).</p> <p><i>Removing, holding or otherwise dealing with information for the purposes of communicating information</i></p> <p>(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.</p> <p><i>Burden of proof for integrity agency officials</i></p> <p>(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:</p> <p>(a) subsection (1), (4) or (4A); or</p> <p>(b) either of the following:</p> <p>(i) subparagraph (3)(a)(i), (ii), (iia) or (iii);</p> <p>(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</p>

Section	Current Provision	Redrafted Provision with Exception
		<p>Law Enforcement Integrity Commissioner.</p> <p><i>Defences do not limit each other</i></p> <p>(13) No defence in this section limits the operation of any other defence in this section.</p>
Division 123: Miscellaneous		
<p>Section 123.1: Injunctions</p>	<p><i>Enforceable provisions</i></p> <p>(1) The provisions of Division 122 are enforceable under Part 7 of the Regulatory Powers Act.</p> <p>Note: Part 7 of the Regulatory Powers Act creates a framework for using injunctions to enforce provisions.</p> <p><i>Authorised person and relevant court</i></p> <p>(2) For the purposes of Part 7 of the Regulatory Powers Act, as that Part applies to the provisions of Division 122 of this Act:</p> <ul style="list-style-type: none"> (a) the Minister is an authorised person; and (b) each of the following is a relevant court: <ul style="list-style-type: none"> (i) the Federal Court of Australia; (ii) the Federal Circuit Court of Australia; (iii) a court of a State or Territory that has jurisdiction in relation to matters arising under this Act. <p><i>Extension to external Territories</i></p> <p>(3) Part 7 of the Regulatory Powers Act, as that Part applies to the provisions of Division 122 of this Act, extends to every external Territory.</p>	<p>No amendment.</p>
<p>Section 123.2: Forfeiture of articles etc.</p>	<p>(1) A sketch, article, record or document which is made, obtained, recorded, retained, possessed or otherwise dealt with in contravention of this Part is forfeited to the Commonwealth.</p> <p>(2) In subsection (1), <i>sketch, article</i> and <i>record</i> have the same respective meanings as in Part 5.2.</p>	<p>No amendment.</p>
<p>Section 123.3: Extended geographical jurisdiction—category D</p>	<p>Section 15.4 (extended geographical jurisdiction—category D) applies to an offence against this Part.</p>	<p>No amendment.</p>
<p>Section 123.4: Effect of this Part on other rights, privileges, immunities or defences</p>	<p>Nothing in this Part limits or affects any other right, privilege, immunity or defence existing apart from this Part.</p>	<p>No amendment.</p>
<p>Section 123.5: Requirements before proceedings can be initiated</p>	<p>(1) Proceedings for the commitment of a person for trial for an offence against this Part must not be instituted without:</p> <ul style="list-style-type: none"> (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. <p>(2) However, the following steps may be taken (but no further steps in proceedings may be taken) without consent or certification having been obtained:</p> <ul style="list-style-type: none"> (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; 	<p>No amendment.</p>

Section	Current Provision	Redrafted Provision with Exception
	<p>(c) a person so charged may be remanded in custody or on bail.</p> <p>(3) Nothing in subsection (2) prevents the discharge of the accused if proceedings are not continued within a reasonable time.</p> <p>(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.</p>	
Part 7.2: Theft and other property offences		
Division 131—Theft		
<p>Section 131.1 Theft</p>	<p>(1) A person commits an offence if:</p> <p>(a) the person dishonestly appropriates property belonging to another with the intention of permanently depriving the other of the property; and</p> <p>(b) the property belongs to a Commonwealth entity.</p> <p>Penalty: Imprisonment for 10 years.</p> <p>(2) For the purposes of this Code, an offence against subsection (1) is to be known as the offence of theft.</p> <p>(3) Absolute liability applies to the paragraph (1)(b) element of the offence of theft.</p> <p>(4) Section 15.4 (extended geographical jurisdiction—category D) applies to an offence against subsection (1).</p> <p>Note: For alternative verdicts, see sections 132.1 and 134.1.</p>	<p>(1) A person commits an offence if:</p> <p>(a) the person dishonestly appropriates property belonging to another with the intention of permanently depriving the other of the property; and</p> <p>(b) the property belongs to a Commonwealth entity.</p> <p>Penalty: Imprisonment for 10 years.</p> <p>(2) For the purposes of this Code, an offence against subsection (1) is to be known as the offence of theft.</p> <p>(3) Absolute liability applies to the paragraph (1)(b) element of the offence of theft.</p> <p>(4) Section 15.4 (extended geographical jurisdiction—category D) applies to an offence against subsection (1).</p> <p>Note: For alternative verdicts, see sections 132.1 and 134.1.</p> <p><u>(5) Subsection (1) does not apply to a person who deals with relevant property 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 and documentary media, and:</u></p> <p>(a) <u>at that time, the person believed that engaging in that conduct was in the public interest; or</u></p> <p>(b) <u>the person:</u></p> <p>(i) <u>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 and documentary media; and</u></p> <p>(ii) <u>acted under the direction of a journalist, editor or lawyer who was also a member of the staff of the entity, and who believed that engaging in that conduct was in the public interest.</u></p> <p><u>(6) In a prosecution for an offence against subsection (1), the defendant does not bear an evidential burden in relation to the matters in subsection (5), despite subsection 13.3(3) of the Criminal Code.</u></p>
Division 132—Other property offences		
<p>Section 132.1: Receiving</p>	<p>(1) A person commits an offence if the person dishonestly receives stolen property, knowing or believing the property to be stolen.</p> <p>Penalty: Imprisonment for 10 years.</p> <p>(2) For the purposes of this Code, an offence against subsection (1) is to be known as the offence of receiving.</p> <p>(2A) In a prosecution for an offence against subsection (1), it is not necessary to prove that the defendant knew or believed that the property belonged to a Commonwealth entity.</p> <p><i>Stolen property</i></p> <p>(3) For the purposes of this section, property is stolen property if, and only if:</p> <p>(a) it is original stolen property (as defined by subsection (5)); or</p> <p>(aa) it is previously received property (as defined by subsection (5A)); or</p> <p>(b) it is tainted property (as defined by subsection (7)).</p> <p>This subsection has effect subject to subsections (4) and (6).</p> <p>(4) For the purposes of this section, stolen property does not include land obtained in the course of an offence against section 134.1.</p>	<p>(1) A person commits an offence if the person dishonestly receives stolen property, knowing or believing the property to be stolen.</p> <p>Penalty: Imprisonment for 10 years.</p> <p>(2) For the purposes of this Code, an offence against subsection (1) is to be known as the offence of receiving.</p> <p>(2A) In a prosecution for an offence against subsection (1), it is not necessary to prove that the defendant knew or believed that the property belonged to a Commonwealth entity.</p> <p><i>Stolen property</i></p> <p>(3) For the purposes of this section, property is stolen property if, and only if:</p> <p>(a) it is original stolen property (as defined by subsection (5)); or</p> <p>(aa) it is previously received property (as defined by subsection (5A)); or</p> <p>(b) it is tainted property (as defined by subsection (7)).</p> <p>This subsection has effect subject to subsections (4) and (6).</p> <p>(4) For the purposes of this section, stolen property does not include land obtained in the course of an offence against section 134.1.</p>

Section	Current Provision	Redrafted Provision with Exception
	<p><i>Original stolen property</i></p> <p>(5) For the purposes of this section, original stolen property is:</p> <ul style="list-style-type: none"> (a) property, or a part of property, that: <ul style="list-style-type: none"> (i) was appropriated in the course of theft (whether or not the property, or the part of the property, is in the state it was in when it was so appropriated); and (ii) is in the possession or custody of the person who so appropriated the property; or (b) property, or a part of property, that: <ul style="list-style-type: none"> (i) was obtained in the course of an offence against section 134.1 (whether or not the property, or the part of the property, is in the state it was in when it was so obtained); and (ii) is in the possession or custody of the person who so obtained the property or the person for whom the property was so obtained. <p><i>Previously received property</i></p> <p>(5A) For the purposes of this section, previously received property is property that:</p> <ul style="list-style-type: none"> (a) was received in the course of an offence against subsection (1); and (b) is in the possession or custody of the person who received the property in the course of that offence. <p>(6) For the purposes of this section, property ceases to be original stolen property or previously received property:</p> <ul style="list-style-type: none"> (a) after the property is restored: <ul style="list-style-type: none"> (i) to the person from whom it was appropriated or obtained; or (ii) to other lawful possession or custody; or (b) after: <ul style="list-style-type: none"> (i) the person from whom the property was appropriated or obtained ceases to have any right to restitution in respect of the property; or (ii) a person claiming through the person from whom the property was appropriated or obtained ceases to have any right to restitution in respect of the property. <p><i>Tainted property</i></p> <p>(7) For the purposes of this section, tainted property is property that:</p> <ul style="list-style-type: none"> (a) is (in whole or in part) the proceeds of sale of, or property exchanged for: <ul style="list-style-type: none"> (i) original stolen property; or (ii) previously received property; and (b) if subparagraph (a)(i) applies—is in the possession or custody of: <ul style="list-style-type: none"> (i) if the original stolen property was appropriated in the course of theft—the person who so appropriated the original stolen property; or (ii) if the original stolen property was obtained in the course of an offence against section 134.1—the person who so obtained the property or the person for whom the property was so obtained; and (c) if subparagraph (a)(ii) applies—is in the possession or custody of the person who received the previously received property in the course of an offence against subsection (1). <p><i>Money transfers</i></p> <p>(8) For the purposes of this section, if, as a result of the application of subsection 134.1(9) or (10), an amount credited to an account held by a person is property obtained in the course of an offence against section 134.1:</p> <ul style="list-style-type: none"> (a) while the whole or any part of the amount remains credited to the account, the property is taken to be in the possession of the person; and (b) if the person fails to take such steps as are reasonable in the circumstances to secure that the credit is cancelled—the person is taken to have received the property; and 	<p><i>Original stolen property</i></p> <p>(5) For the purposes of this section, original stolen property is:</p> <ul style="list-style-type: none"> (a) property, or a part of property, that: <ul style="list-style-type: none"> (i) was appropriated in the course of theft (whether or not the property, or the part of the property, is in the state it was in when it was so appropriated); and (ii) is in the possession or custody of the person who so appropriated the property; or (b) property, or a part of property, that: <ul style="list-style-type: none"> (i) was obtained in the course of an offence against section 134.1 (whether or not the property, or the part of the property, is in the state it was in when it was so obtained); and (ii) is in the possession or custody of the person who so obtained the property or the person for whom the property was so obtained. <p><i>Previously received property</i></p> <p>(5A) For the purposes of this section, previously received property is property that:</p> <ul style="list-style-type: none"> (a) was received in the course of an offence against subsection (1); and (b) is in the possession or custody of the person who received the property in the course of that offence. <p>(6) For the purposes of this section, property ceases to be original stolen property or previously received property:</p> <ul style="list-style-type: none"> (a) after the property is restored: <ul style="list-style-type: none"> (i) to the person from whom it was appropriated or obtained; or (ii) to other lawful possession or custody; or (b) after: <ul style="list-style-type: none"> (i) the person from whom the property was appropriated or obtained ceases to have any right to restitution in respect of the property; or (ii) a person claiming through the person from whom the property was appropriated or obtained ceases to have any right to restitution in respect of the property. <p><i>Tainted property</i></p> <p>(7) For the purposes of this section, tainted property is property that:</p> <ul style="list-style-type: none"> (a) is (in whole or in part) the proceeds of sale of, or property exchanged for: <ul style="list-style-type: none"> (i) original stolen property; or (ii) previously received property; and (b) if subparagraph (a)(i) applies—is in the possession or custody of: <ul style="list-style-type: none"> (i) if the original stolen property was appropriated in the course of theft—the person who so appropriated the original stolen property; or (ii) if the original stolen property was obtained in the course of an offence against section 134.1—the person who so obtained the property or the person for whom the property was so obtained; and (c) if subparagraph (a)(ii) applies—is in the possession or custody of the person who received the previously received property in the course of an offence against subsection (1). <p><i>Money transfers</i></p> <p>(8) For the purposes of this section, if, as a result of the application of subsection 134.1(9) or (10), an amount credited to an account held by a person is property obtained in the course of an offence against section 134.1:</p> <ul style="list-style-type: none"> (a) while the whole or any part of the amount remains credited to the account, the property is taken to be in the possession of the person; and (b) if the person fails to take such steps as are reasonable in the circumstances to secure that the credit is cancelled—the person is taken to have received the property; and

Section	Current Provision	Redrafted Provision with Exception
	<p>(c) subsection (6) of this section does not apply to the property.</p> <p>Note: Subsections 134.1(9) and (10) deal with money transfers.</p> <p><i>Alternative verdicts</i></p> <p>(9) If, in a prosecution for an offence of theft or an offence against section 134.1, the trier of fact is not satisfied that the defendant is guilty of the offence, but is satisfied beyond reasonable doubt that the defendant is guilty of an offence of receiving, the trier of fact may find the defendant not guilty of the offence of theft or the section 134.1 offence but guilty of the offence of receiving, so long as the defendant has been accorded procedural fairness in relation to that finding of guilt.</p> <p>(10) If, in a prosecution for an offence of receiving, the trier of fact is not satisfied that the defendant is guilty of the offence, but is satisfied beyond reasonable doubt that the defendant is guilty of an offence of theft or an offence against section 134.1, the trier of fact may find the defendant not guilty of the offence of receiving but guilty of the offence of theft or the section 134.1 offence, so long as the defendant has been accorded procedural fairness in relation to that finding of guilt.</p> <p><i>Receiving property stolen before commencement</i></p> <p>(11) For the purposes of this section:</p> <p>(a) it is to be assumed that sections 131.1 and 134.1 had been in force at all times before the commencement of this section; and</p> <p>(b) property that was appropriated or obtained at a time before the commencement of this section does not become original stolen property unless the property was appropriated or obtained in circumstances that (apart from paragraph (a)) amounted to an offence against a law of the Commonwealth in force at that time.</p> <p><i>Obtaining</i></p> <p>(12) The definition of obtaining in section 130.1 does not apply to this section.</p> <p>Note: See subsection 134.1(3).</p> <p><i>Definition</i></p> <p>(13) In this section:</p> <p>account has the same meaning as in section 133.1.</p>	<p>(c) subsection (6) of this section does not apply to the property.</p> <p>Note: Subsections 134.1(9) and (10) deal with money transfers.</p> <p><i>Alternative verdicts</i></p> <p>(9) If, in a prosecution for an offence of theft or an offence against section 134.1, the trier of fact is not satisfied that the defendant is guilty of the offence, but is satisfied beyond reasonable doubt that the defendant is guilty of an offence of receiving, the trier of fact may find the defendant not guilty of the offence of theft or the section 134.1 offence but guilty of the offence of receiving, so long as the defendant has been accorded procedural fairness in relation to that finding of guilt.</p> <p>(10) If, in a prosecution for an offence of receiving, the trier of fact is not satisfied that the defendant is guilty of the offence, but is satisfied beyond reasonable doubt that the defendant is guilty of an offence of theft or an offence against section 134.1, the trier of fact may find the defendant not guilty of the offence of receiving but guilty of the offence of theft or the section 134.1 offence, so long as the defendant has been accorded procedural fairness in relation to that finding of guilt.</p> <p><i>Receiving property stolen before commencement</i></p> <p>(11) For the purposes of this section:</p> <p>(a) it is to be assumed that sections 131.1 and 134.1 had been in force at all times before the commencement of this section; and</p> <p>(b) property that was appropriated or obtained at a time before the commencement of this section does not become original stolen property unless the property was appropriated or obtained in circumstances that (apart from paragraph (a)) amounted to an offence against a law of the Commonwealth in force at that time.</p> <p><i>Obtaining</i></p> <p>(12) The definition of obtaining in section 130.1 does not apply to this section.</p> <p>Note: See subsection 134.1(3).</p> <p><u><i>Exception</i></u></p> <p><u>(12A) Subsection (1) does not apply to a person who deals with relevant property 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 and documentary media, and:</u></p> <p>(a) <u>at that time, the person believed that engaging in that conduct was in the public interest; or</u></p> <p>(b) <u>the person:</u></p> <p>(i) <u>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 and documentary media; and</u></p> <p>(ii) <u>acted under the direction of a journalist, editor or lawyer who was also a member of the staff of the entity, and who believed that engaging in that conduct was in the public interest.</u></p> <p><u>(12B) In a prosecution for an offence against subsection (1), the defendant does not bear an evidential burden in relation to the matters in subsection (12A), despite subsection 13.3(3) of the Criminal Code.</u></p> <p><i>Definition</i></p> <p>(13) In this section:</p> <p>account has the same meaning as in section 133.1.</p>
Other sections		
<p>Section 119.7: Recruiting persons to serve in or with an armed force in a foreign country</p>	<p><i>Recruiting others to serve with foreign armed forces</i></p> <p>(1) A person commits an offence if the person recruits, in Australia, another person to serve in any capacity in or with an armed force in a foreign country.</p> <p>Penalty: Imprisonment for 10 years.</p> <p><i>Publishing recruitment advertisements</i></p>	<p><i>Recruiting others to serve with foreign armed forces</i></p> <p>(1) A person commits an offence if the person recruits, in Australia, another person to serve in any capacity in or with an armed force in a foreign country.</p> <p>Penalty: Imprisonment for 10 years.</p> <p><i>Publishing recruitment advertisements</i></p>

Section	Current Provision	Redrafted Provision with Exception
	<p>(2) A person commits an offence if:</p> <ul style="list-style-type: none"> (a) the person publishes in Australia: <ul style="list-style-type: none"> (i) an advertisement; or (ii) an item of news that was procured by the provision or promise of money or any other consideration; and (b) the person is reckless as to the fact that the publication of the advertisement or item of news is for the purpose of recruiting persons to serve in any capacity in or with an armed force in a foreign country. <p>Penalty: Imprisonment for 10 years.</p> <p>(3) A person commits an offence if:</p> <ul style="list-style-type: none"> (a) the person publishes in Australia: <ul style="list-style-type: none"> (i) an advertisement; or (ii) an item of news that was procured by the provision or promise of money or any other consideration; and (b) the advertisement or item of news contains information: <ul style="list-style-type: none"> (i) relating to the place at which, or the manner in which, persons may make applications to serve, or obtain information relating to service, in any capacity in or with an armed force in a foreign country; or (ii) relating to the manner in which persons may travel to a foreign country for the purpose of serving in any capacity in or with an armed force in a foreign country. <p>Penalty: Imprisonment for 10 years.</p> <p><i>Facilitating recruitment</i></p> <p>(4) A person commits an offence if:</p> <ul style="list-style-type: none"> (a) the person engages in conduct in Australia; and (b) the person engages in the conduct intending to facilitate or promote the recruitment of persons to serve in any capacity in or with an armed force in a foreign country. <p>Penalty: Imprisonment for 10 years.</p> <p><i>Exception</i></p> <p>(5) This section does not apply in relation to service of a person in or with an armed force in circumstances if a declaration under subsection 119.8(2) covers the person and the circumstances of the person's service in or with the armed force.</p> <p>Note 1: A defendant bears an evidential burden in relation to the matter in subsection (5): see subsection 13.3(3).</p> <p>Note 2: For conduct for the defence or international relations of Australia, see section 119.9.</p> <p><i>Armed forces that are not part of the government of a foreign country</i></p> <p>(6) A reference in this section to an armed force in a foreign country includes any armed force in a foreign country, whether or not the armed force forms part of the armed forces of the government of that foreign country.</p> <p>(7) Without limiting this section, a person recruits another person to serve in or with an armed force in a foreign country if the other person enters a commitment or engagement to serve in any capacity in or with an armed force, whether or not the commitment or engagement is legally enforceable or constitutes legal or formal enlistment in that force.</p>	<p>(2) A person commits an offence if:</p> <ul style="list-style-type: none"> (a) the person publishes in Australia: <ul style="list-style-type: none"> (i) an advertisement; or (ii) an item of news that was procured by the provision or promise of money or any other consideration; and (b) the person is reckless as to the fact that the publication of the advertisement or item of news is for the purpose of recruiting persons to serve in any capacity in or with an armed force in a foreign country. <p>Penalty: Imprisonment for 10 years.</p> <p>(3) A person commits an offence if:</p> <ul style="list-style-type: none"> (a) the person publishes in Australia: <ul style="list-style-type: none"> (i) an advertisement; or (ii) an item of news that was procured by the provision or promise of money or any other consideration; and (b) the advertisement or item of news contains information: <ul style="list-style-type: none"> (i) relating to the place at which, or the manner in which, persons may make applications to serve, or obtain information relating to service, in any capacity in or with an armed force in a foreign country; or (ii) relating to the manner in which persons may travel to a foreign country for the purpose of serving in any capacity in or with an armed force in a foreign country. <p>Penalty: Imprisonment for 10 years.</p> <p><i>Facilitating recruitment</i></p> <p>(4) A person commits an offence if:</p> <ul style="list-style-type: none"> (a) the person engages in conduct in Australia; and (b) the person engages in the conduct intending to facilitate or promote the recruitment of persons to serve in any capacity in or with an armed force in a foreign country. <p>Penalty: Imprisonment for 10 years.</p> <p><i>Exceptions</i></p> <p>(5) This section does not apply in relation to service of a person in or with an armed force in circumstances if a declaration under subsection 119.8(2) covers the person and the circumstances of the person's service in or with the armed force.</p> <p>Note 1: A defendant bears an evidential burden in relation to the matter in subsection (5): see subsection 13.3(3).</p> <p>Note 2: For conduct for the defence or international relations of Australia, see section 119.9.</p> <p><u>(5A) Section 119.7 does not apply to a person who engages in conduct 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 and documentary media, and:</u></p> <ul style="list-style-type: none"> (a) <u>at that time, the person believed that engaging in that conduct was in the public interest; or</u> (b) <u>the person:</u> <ul style="list-style-type: none"> (i) <u>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 and documentary media; and</u> (ii) <u>acted under the direction of a journalist, editor or lawyer who was also a member of the staff of the entity, and who believed that engaging in that conduct was in the public interest.</u> <p><u>(5B) In a prosecution for an offence under this Division, the defendant does not bear an evidential burden in relation to the matters in subsection (5A), despite subsection 13.3(3) of the Criminal Code.</u></p>

Section	Current Provision	Redrafted Provision with Exception
		<p><i>Armed forces that are not part of the government of a foreign country</i></p> <p>(6) A reference in this section to an armed force in a foreign country includes any armed force in a foreign country, whether or not the armed force forms part of the armed forces of the government of that foreign country.</p> <p>(7) Without limiting this section, a person recruits another person to serve in or with an armed force in a foreign country if the other person enters a commitment or engagement to serve in any capacity in or with an armed force, whether or not the commitment or engagement is legally enforceable or constitutes legal or formal enlistment in that force.</p>
<p>Section 80.2C: Advocating terrorism</p>	<p>(1) A person commits an offence if:</p> <ul style="list-style-type: none"> (a) the person advocates: <ul style="list-style-type: none"> (i) the doing of a terrorist act; or (ii) the commission of a terrorism offence referred to in subsection (2); and (b) the person engages in that conduct reckless as to whether another person will: <ul style="list-style-type: none"> (i) engage in a terrorist act; or (ii) commit a terrorism offence referred to in subsection (2). <p>Note: There is a defence in section 80.3 for acts done in good faith.</p> <p>Penalty: Imprisonment for 5 years.</p> <p>(2) A terrorism offence is referred to in this subsection if:</p> <ul style="list-style-type: none"> (a) the offence is punishable on conviction by imprisonment for 5 years or more; and (b) the offence is not: <ul style="list-style-type: none"> (i) an offence against section 11.1 (attempt), 11.4 (incitement) or 11.5 (conspiracy) to the extent that it relates to a terrorism offence; or (ii) a terrorism offence that a person is taken to have committed because of section 11.2 (complicity and common purpose), 11.2A (joint commission) or 11.3 (commission by proxy). <p><i>Definitions</i></p> <p>(3) In this section:</p> <p>advocates: a person advocates the doing of a terrorist act or the commission of a terrorism offence if the person counsels, promotes, encourages or urges the doing of a terrorist act or the commission of a terrorism offence.</p> <p>terrorism offence has the same meaning as in subsection 3(1) of the <i>Crimes Act 1914</i>.</p> <p>terrorist act has the same meaning as in section 100.1.</p> <p>(4) A reference in this section to advocating the doing of a terrorist act or the commission of a terrorism offence includes a reference to:</p> <ul style="list-style-type: none"> (a) advocating the doing of a terrorist act or the commission of a terrorism offence, even if a terrorist act or terrorism offence does not occur; and (b) advocating the doing of a specific terrorist act or the commission of a specific terrorism offence; and (c) advocating the doing of more than one terrorist act or the commission of more than one terrorism offence. 	<p>No amendment.</p>
<p>Section 80.3: Acts done in good faith</p>	<p>(1) Subdivisions B and C, and sections 83.1 and 83.4, do not apply to a person who:</p> <ul style="list-style-type: none"> (a) tries in good faith to show that any of the following persons are mistaken in any of his or her counsels, policies or actions: <ul style="list-style-type: none"> (iii) the Sovereign; (iv) the Governor-General; (v) the Governor of a State; (vi) the Administrator of a Territory; 	<p>(1) Subdivisions B and C, and sections 83.1 and 83.4, do not apply to a person who:</p> <ul style="list-style-type: none"> (a) tries in good faith to show that any of the following persons are mistaken in any of his or her counsels, policies or actions: <ul style="list-style-type: none"> (i) the Sovereign; (ii) the Governor-General; (iii) the Governor of a State; (iv) the Administrator of a Territory;

Section	Current Provision	Redrafted Provision with Exception
	<p>(vii) an adviser of any of the above;</p> <p>(viii) a person responsible for the government of another country; or</p> <p>(b) points out in good faith errors or defects in the following, with a view to reforming those errors or defects:</p> <p>(i) the Government of the Commonwealth, a State or a Territory;</p> <p>(ii) the Constitution;</p> <p>(iii) legislation of the Commonwealth, a State, a Territory or another country;</p> <p>(iv) the administration of justice of or in the Commonwealth, a State, a Territory or another country; or</p> <p>(c) urges in good faith another person to attempt to lawfully procure a change to any matter established by law, policy or practice in the Commonwealth, a State, a Territory or another country; or</p> <p>(d) points out in good faith any matters that are producing, or have a tendency to produce, feelings of ill-will or hostility between different groups, in order to bring about the removal of those matters; or</p> <p>(e) does anything in good faith in connection with an industrial dispute or an industrial matter; or</p> <p>(f) publishes in good faith a report or commentary about a matter of public interest.</p> <p>Note: A defendant bears an evidential burden in relation to the matter in subsection (1). See subsection 13.3(3).</p> <p>(2) In considering a defence under subsection (1), the Court may have regard to any relevant matter, including whether the acts were done:</p> <p>(a) for a purpose intended to be prejudicial to the safety or defence of the Commonwealth; or</p> <p>(b) with the intention of assisting a party:</p> <p>(i) engaged in armed conflict involving the Commonwealth or the Australian Defence Force; and</p> <p>(ii) declared in a Proclamation made under section 80.1AB to be an enemy engaged in armed conflict involving the Commonwealth or the Australian Defence Force; or</p> <p>(f) with the intention of causing violence or creating public disorder or a public disturbance.</p> <p>(3) Without limiting subsection (2), in considering a defence under subsection (1) in respect of an offence against Subdivision C, the Court may have regard to any relevant matter, including whether the acts were done:</p> <p>(a) in the development, performance, exhibition or distribution of an artistic work; or</p> <p>(b) in the course of any statement, publication, discussion or debate made or held for any genuine academic, artistic or scientific purpose or any other genuine purpose in the public interest; or</p> <p>(c) in the dissemination of news or current affairs.</p>	<p>(v) an adviser of any of the above;</p> <p>(vi) a person responsible for the government of another country; or</p> <p>(b) points out in good faith errors or defects in the following, with a view to reforming those errors or defects:</p> <p>(i) the Government of the Commonwealth, a State or a Territory;</p> <p>(ii) the Constitution;</p> <p>(iii) legislation of the Commonwealth, a State, a Territory or another country;</p> <p>(iv) the administration of justice of or in the Commonwealth, a State, a Territory or another country; or</p> <p>(c) urges in good faith another person to attempt to lawfully procure a change to any matter established by law, policy or practice in the Commonwealth, a State, a Territory or another country; or</p> <p>(d) points out in good faith any matters that are producing, or have a tendency to produce, feelings of ill-will or hostility between different groups, in order to bring about the removal of those matters; or</p> <p>(e) does anything in good faith in connection with an industrial dispute or an industrial matter; or</p> <p>(f) publishes in good faith a report or commentary about a matter of public interest.</p> <p>(g)</p> <p>Note: A defendant bears an evidential burden in relation to the matter in subsection (1)(e). See subsection 13.3(3).</p> <p><u>(1A) In a prosecution for an offence against subdivisions B and C, and sections 83.1 and 83.4, the defendant does not bear an evidential burden in relation to the matters in subsection 80.3(a), (b), (c), (d) or (f), despite subsection 13.3 of the Criminal Code.</u></p> <p>(2) In considering a defence under subsection (1), the Court may have regard to any relevant matter, including whether the acts were done:</p> <p>(a) for a purpose intended to be prejudicial to the safety or defence of the Commonwealth; or</p> <p>(b) with the intention of assisting a party:</p> <p>(i) engaged in armed conflict involving the Commonwealth or the Australian Defence Force; and</p> <p>(ii) declared in a Proclamation made under section 80.1AB to be an enemy engaged in armed conflict involving the Commonwealth or the Australian Defence Force; or</p> <p>(c) with the intention of causing violence or creating public disorder or a public disturbance.</p> <p>(3) Without limiting subsection (2), in considering a defence under subsection (1) in respect of an offence against Subdivision C, the Court may have regard to any relevant matter, including whether the acts were done:</p> <p>(a) in the development, performance, exhibition or distribution of an artistic work; or</p> <p>(b) in the course of any statement, publication, discussion or debate made or held for any genuine academic, artistic or scientific purpose or any other genuine purpose in the public interest; or</p> <p>in the dissemination of news or current affairs.</p>
<p>Section 474.47: Using a carriage service for inciting property damage, or theft, on agricultural land</p>	<p>(1) A person (the offender) commits an offence if:</p> <p>(a) the offender transmits, makes available, publishes or otherwise distributes material; and</p> <p>(b) the offender does so using a carriage service; and</p> <p>(c) the offender does so with the intention of inciting another person to:</p> <p>(i) unlawfully damage property on agricultural land; or</p> <p>(ii) unlawfully destroy property on agricultural land; or</p> <p>(iii) commit theft of property on agricultural land.</p> <p>Penalty: Imprisonment for 5 years.</p> <p>(2) Subsection (1) does not apply to material if the material relates to a news report, or a current affairs report,</p>	<p>(1) A person (the offender) commits an offence if:</p> <p>(a) the offender transmits, makes available, publishes or otherwise distributes material; and</p> <p>(b) the offender does so using a carriage service; and</p> <p>(c) the offender does so with the intention of inciting another person to:</p> <p>(i) unlawfully damage property on agricultural land; or</p> <p>(ii) unlawfully destroy property on agricultural land; or</p> <p>(iii) commit theft of property on agricultural land.</p> <p>Penalty: Imprisonment for 5 years.</p> <p>(2) Subsection (1) does not apply to material if the material relates to a news report, or a current affairs report,</p>

Section	Current Provision	Redrafted Provision with Exception
	<p>that:</p> <p>(d) is in the public interest; and</p> <p>(e) is made by a person working in a professional capacity as a journalist.</p> <p>(2A) In a prosecution for an offence against subsection (1), the defendant does not bear an evidential burden in relation to the matters in subsection (2), despite subsection 13.3(3).</p> <p>(3) Subsection (1) does not apply to conduct engaged in by a person if, as a result of the operation of a law of the Commonwealth, a State or a Territory, the person is not subject to any civil or criminal liability for the conduct.</p> <p>Note 1: The Public Interest Disclosure Act 2013 provides that an individual is not subject to any civil or criminal liability for making a public interest disclosure.</p> <p>Note 2: Section 1317AB of the Corporations Act 2001 provides that a person who makes a disclosure that qualifies for protection under Part 9.4AAA of that Act is not subject to any civil or criminal liability for making the disclosure.</p> <p>Note 3: A defendant bears an evidential burden in relation to the matters in this subsection (see subsection 13.3(3)).</p> <p>(4) Subsection (3) does not limit section 10.5 (lawful authority).</p> <p>When a person commits theft</p> <p>(5) For the purposes of this section, a person commits theft of property if:</p> <p>(a) the property belongs to another person; and</p> <p>(b) the person dishonestly appropriates the property with the intention of permanently depriving the other person of the property.</p> <p>(6) An expression used in subsection (5) and in Chapter 7 has the same meaning in that subsection as it has in that Chapter.</p> <p>(7) In a prosecution for an offence against this section, the determination of dishonesty is a matter for the trier of fact.</p> <p>(8) Sections 131.2 to 131.11 apply (with appropriate modifications) in determining whether a person commits theft of property (within the meaning of this section).</p>	<p>that:</p> <p>(d) is in the public interest; and</p> <p>(e) is made by a person working in a professional capacity as a journalist.</p> <p><u>to a person who communicates, removes, holds or otherwise deals with 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 and documentary media, and:</u></p> <p>(a) <u>at that time, the person believed that engaging in that conduct was in the public interest; or</u></p> <p>(b) <u>the person:</u></p> <p>(i) <u>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 and documentary media; and</u></p> <p>(ii) <u>acted under the direction of a journalist, editor or lawyer who was also a member of the staff of the entity, and who believed that engaging in that conduct was in the public interest.</u></p> <p>(2A) In a prosecution for an offence against subsection (1), the defendant does not bear an evidential burden in relation to the matters in subsection (2), despite subsection 13.3(3).</p> <p>(3) Subsection (1) does not apply to conduct engaged in by a person if, as a result of the operation of a law of the Commonwealth, a State or a Territory, the person is not subject to any civil or criminal liability for the conduct.</p> <p>Note 1: The Public Interest Disclosure Act 2013 provides that an individual is not subject to any civil or criminal liability for making a public interest disclosure.</p> <p>Note 2: Section 1317AB of the Corporations Act 2001 provides that a person who makes a disclosure that qualifies for protection under Part 9.4AAA of that Act is not subject to any civil or criminal liability for making the disclosure.</p> <p>Note 3: A defendant bears an evidential burden in relation to the matters in this subsection (see subsection 13.3(3)).</p> <p>(4) Subsection (3) does not limit section 10.5 (lawful authority).</p> <p>When a person commits theft</p> <p>(5) For the purposes of this section, a person commits theft of property if:</p> <p>(a) the property belongs to another person; and</p> <p>(b) the person dishonestly appropriates the property with the intention of permanently depriving the other person of the property.</p> <p>(6) An expression used in subsection (5) and in Chapter 7 has the same meaning in that subsection as it has in that Chapter.</p> <p>(7) In a prosecution for an offence against this section, the determination of dishonesty is a matter for the trier of fact.</p> <p>(8) Sections 131.2 to 131.11 apply (with appropriate modifications) in determining whether a person commits theft of property (within the meaning of this section).</p>
Crimes Act 1914 (Cth)		
<p>Section 3ZZHA: Unauthorised disclosure of information</p>	<p>(1) A person commits an offence if:</p> <p>(a) the person discloses information; and</p> <p>(b) the information relates to:</p> <p>(i) an application for a delayed notification search warrant; or</p> <p>(ii) the execution of a delayed notification search warrant; or</p> <p>(iii) a report under section 3ZZFA in relation to a delayed notification search warrant; or</p> <p>(iv) a warrant premises occupier's notice or an adjoining premises occupier's notice prepared in</p>	<p>(1) A person commits an offence if:</p> <p>(a) the person discloses information; and</p> <p>(b) the information relates to:</p> <p>(i) an application for a delayed notification search warrant; or</p> <p>(ii) the execution of a delayed notification search warrant; or</p> <p>(iii) a report under section 3ZZFA in relation to a delayed notification search warrant; or</p> <p>(iv) a warrant premises occupier's notice or an adjoining premises occupier's notice prepared in</p>

Section	Current Provision	Redrafted Provision with Exception
	<p>relation to a delayed notification search warrant.</p> <p>Penalty: Imprisonment for 2 years.</p> <p>(2) Each of the following is an exception to the offence created by subsection (1):</p> <ul style="list-style-type: none"> (a) the disclosure is in connection with the administration or execution of this Part; (aa) the disclosure is for the purposes of obtaining or providing legal advice related to this Part; (b) the disclosure is for the purposes of any legal proceeding arising out of or otherwise related to this Part or of any report of any such proceedings; (c) the disclosure is in accordance with any requirement imposed by law; (d) the disclosure is for the purposes of: <ul style="list-style-type: none"> (i) the performance of duties or functions or the exercise of powers under or in relation to this Part; or (ii) the performance of duties or functions or the exercise of powers by a law enforcement officer, an officer of the Australian Security Intelligence Organisation, a staff member of the Australian Secret Intelligence Service or a person seconded to either of those bodies; (da) the disclosure is made by anyone to the Ombudsman, a Deputy Commonwealth Ombudsman or a member of the Ombudsman's staff (whether in connection with the exercise of powers or performance of functions under Division 7, in connection with a complaint made to the Ombudsman or in any other circumstances); (e) the disclosure is made after a warrant premises occupier's notice or an adjoining premises occupier's notice has been given in relation to the warrant; (f) the disclosure is made after a direction has been given under subsection 3ZZDA(4) or 3ZZDB(4) in relation to the warrant. <p>Note: A defendant bears an evidential burden in relation to a matter in subsection (2)—see subsection 13.3(3) of the <i>Criminal Code</i>.</p>	<p>relation to a delayed notification search warrant.</p> <p>Penalty: Imprisonment for 2 years.</p> <p>(2) Each of the following is an exception to the offence created by subsection (1):</p> <ul style="list-style-type: none"> (a) the disclosure is in connection with the administration or execution of this Part; (aa) the disclosure is for the purposes of obtaining or providing legal advice related to this Part; (b) the disclosure is for the purposes of any legal proceeding arising out of or otherwise related to this Part or of any report of any such proceedings; (c) the disclosure is in accordance with any requirement imposed by law; (d) the disclosure is for the purposes of: <ul style="list-style-type: none"> (i) the performance of duties or functions or the exercise of powers under or in relation to this Part; or (ii) the performance of duties or functions or the exercise of powers by a law enforcement officer, an officer of the Australian Security Intelligence Organisation, a staff member of the Australian Secret Intelligence Service or a person seconded to either of those bodies; (da) the disclosure is made by anyone to the Ombudsman, a Deputy Commonwealth Ombudsman or a member of the Ombudsman's staff (whether in connection with the exercise of powers or performance of functions under Division 7, in connection with a complaint made to the Ombudsman or in any other circumstances); (e) the disclosure is made after a warrant premises occupier's notice or an adjoining premises occupier's notice has been given in relation to the warrant; (f) the disclosure is made after a direction has been given under subsection 3ZZDA(4) or 3ZZDB(4) in relation to the warrant; (g) <u>subsection 3ZZHA(1) does not apply to a person who communicates, removes, holds or otherwise deals with 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 and documentary media, and:</u> <ul style="list-style-type: none"> (i) <u>at that time, the person believed that engaging in that conduct was in the public interest; or</u> (ii) <u>the person:</u> <ul style="list-style-type: none"> (A) <u>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 and documentary media; and</u> (B) <u>acted under the direction of a journalist, editor or lawyer who was also a member of the staff of the entity, and who believed that engaging in that conduct was in the public interest.</u> (h) <u>in a prosecution for an offence under subsection 3ZZHA(1), the defendant does not bear an evidential burden in relation to the matters in subsection (g), despite subsection 13.3(3) of the Criminal Code.</u> <p>Note: A defendant bears an evidential burden in relation to the <u>the matters</u> in subsection (2)(a) – (f)—see subsection 13.3(3) of the <i>Criminal Code</i>.</p>
<p>Section 15HK: Unauthorised disclosure of information</p>	<p><i>Disclosures by entrusted persons</i></p> <p>(1) A person commits an offence if:</p> <ul style="list-style-type: none"> (a) the person is, or has been, an entrusted person; and (b) information came to the knowledge or into the possession of the person in the person's capacity as an entrusted person; and (c) the person discloses the information; and (d) the information relates to a controlled operation. <p>Note: Recklessness is the fault element for paragraphs (1)(b) and (d)—see section 5.6 of the <i>Criminal Code</i>.</p>	<p><i>Disclosures by entrusted persons</i></p> <p>(1) A person commits an offence if:</p> <ul style="list-style-type: none"> (a) the person is, or has been, an entrusted person; and (b) information came to the knowledge or into the possession of the person in the person's capacity as an entrusted person; and (c) the person discloses the information; and (d) the information relates to a controlled operation. <p>Note: Recklessness is the fault element for paragraphs (1)(b) and (d)—see section 5.6 of the <i>Criminal Code</i>.</p>

Section	Current Provision	Redrafted Provision with Exception
	<p>Penalty: Imprisonment for 2 years.</p> <p>(1A) Strict liability applies to paragraph (1)(a).</p> <p>Note: For strict liability, see section 6.1 of the <i>Criminal Code</i>.</p> <p>(1B) A person commits an offence if:</p> <ul style="list-style-type: none"> (a) the person is, or has been, an entrusted person; and (b) information came to the knowledge or into the possession of the person in the person’s capacity as an entrusted person; and (c) the person discloses the information; and (d) the information relates to a controlled operation; and (e) either or both of the following subparagraphs apply: <ul style="list-style-type: none"> (i) the person intends to endanger the health or safety of any person or prejudice the effective conduct of a controlled operation; (ii) the disclosure will endanger the health or safety of any person or prejudice the effective conduct of a controlled operation. <p>Note: Recklessness is the fault element for paragraphs (1B)(b) and (d) and subparagraph (1B)(e)(ii)—see section 5.6 of the <i>Criminal Code</i>.</p> <p>Penalty: Imprisonment for 10 years.</p> <p>(1C) Strict liability applies to paragraph (1B)(a).</p> <p>Note: For strict liability, see section 6.1 of the <i>Criminal Code</i>.</p> <p><i>Other disclosures</i></p> <p>(1D) A person commits an offence if:</p> <ul style="list-style-type: none"> (a) the person discloses information; and (b) the information relates to a controlled operation; and (c) the disclosure will endanger the health or safety of any person or prejudice the effective conduct of a controlled operation. <p>Note: Recklessness is the fault element for paragraphs (1D)(b) and (c)—see section 5.6 of the <i>Criminal Code</i>.</p> <p>Penalty: Imprisonment for 2 years.</p> <p>(1E) A person commits an offence if:</p> <ul style="list-style-type: none"> (a) the person discloses information; and (b) the information relates to a controlled operation; and (c) either or both of the following subparagraphs apply: <ul style="list-style-type: none"> (i) the person intends to endanger the health or safety of any person or prejudice the effective conduct of a controlled operation; (ii) the person knows that the disclosure will endanger the health or safety of any person or prejudice the effective conduct of a controlled operation. <p>Note: Recklessness is the fault element for paragraph (1E)(b)—see section 5.6 of the <i>Criminal Code</i>.</p> <p>Penalty: Imprisonment for 10 years.</p> <p><i>Exceptions—general</i></p> <p>(2) Subsections (1) to (1E) do not apply if the disclosure was:</p> <ul style="list-style-type: none"> (a) in connection with the administration or execution of this Part; or (b) for the purposes of any legal proceedings arising out of or otherwise related to this Part or of any report of any such proceedings; or 	<p>Penalty: Imprisonment for 2 years.</p> <p>(1A) Strict liability applies to paragraph (1)(a).</p> <p>Note: For strict liability, see section 6.1 of the <i>Criminal Code</i>.</p> <p>(1B) A person commits an offence if:</p> <ul style="list-style-type: none"> (a) the person is, or has been, an entrusted person; and (b) information came to the knowledge or into the possession of the person in the person’s capacity as an entrusted person; and (c) the person discloses the information; and (d) the information relates to a controlled operation; and (e) either or both of the following subparagraphs apply: <ul style="list-style-type: none"> (v) the person intends to endanger the health or safety of any person or prejudice the effective conduct of a controlled operation; (vi) the disclosure will endanger the health or safety of any person or prejudice the effective conduct of a controlled operation. <p>Note: Recklessness is the fault element for paragraphs (1B)(b) and (d) and subparagraph (1B)(e)(ii)—see section 5.6 of the <i>Criminal Code</i>.</p> <p>Penalty: Imprisonment for 10 years.</p> <p>(1C) Strict liability applies to paragraph (1B)(a).</p> <p>Note: For strict liability, see section 6.1 of the <i>Criminal Code</i>.</p> <p><i>Other disclosures</i></p> <p>(1D) A person commits an offence if:</p> <ul style="list-style-type: none"> (a) the person discloses information; and (b) the information relates to a controlled operation; and (c) the disclosure will endanger the health or safety of any person or prejudice the effective conduct of a controlled operation. <p>Note: Recklessness is the fault element for paragraphs (1D)(b) and (c)—see section 5.6 of the <i>Criminal Code</i>.</p> <p>Penalty: Imprisonment for 2 years.</p> <p>(1E) A person commits an offence if:</p> <ul style="list-style-type: none"> (a) the person discloses information; and (b) the information relates to a controlled operation; and (c) either or both of the following subparagraphs apply: <ul style="list-style-type: none"> (vii) the person intends to endanger the health or safety of any person or prejudice the effective conduct of a controlled operation; (viii) the person knows that the disclosure will endanger the health or safety of any person or prejudice the effective conduct of a controlled operation. <p>Note: Recklessness is the fault element for paragraph (1E)(b)—see section 5.6 of the <i>Criminal Code</i>.</p> <p>Penalty: Imprisonment for 10 years.</p> <p><i>Exceptions—general</i></p> <p>(2) Subsections (1) to (1E) do not apply if the disclosure was:</p> <ul style="list-style-type: none"> (a) in connection with the administration or execution of this Part; or (b) for the purposes of any legal proceedings arising out of or otherwise related to this Part or of any report of any such proceedings; or

Section	Current Provision	Redrafted Provision with Exception
	<p>(c) for the purposes of obtaining legal advice in relation to the controlled operation; or</p> <p>(d) in accordance with any requirement imposed by law; or</p> <p>(e) in connection with the performance of functions or duties, or the exercise of powers, of a law enforcement agency.</p> <p>Note: A defendant bears an evidential burden in relation to the matters in this subsection—see subsection 13.3(3) of the <i>Criminal Code</i>.</p> <p><i>Exceptions—integrity testing controlled operation authority</i></p> <p>(2A) Subsections (1) to (1E) do not apply, in the case of a controlled operation authorised by an integrity testing controlled operation authority (granted on the basis that an integrity testing authority is in effect), if the disclosure was:</p> <p>(a) in any of the circumstances mentioned in paragraphs (2)(a) to (e); or</p> <p>(b) in connection with the administration or execution of Part IABA, or the <i>Law Enforcement Integrity Commissioner Act 2006</i>, in relation to the integrity testing authority; or</p> <p>(c) for the purposes of any disciplinary or legal action in relation to a staff member of a target agency, if arising out of, or otherwise related to, the controlled operation; or</p> <p>(d) in relation to the integrity testing authority:</p> <p>(i) for the purposes of any disciplinary or legal action in relation to a staff member of a target agency, if arising out of, or otherwise related to, an integrity testing operation authorised by the authority; or</p> <p>(ii) to an authority of the Commonwealth, a State or a Territory, if the disclosure relates to the misconduct of an employee or officer of the authority.</p> <p>Note: A defendant bears an evidential burden in relation to the matters in this subsection—see subsection 13.3(3) of the <i>Criminal Code</i>.</p> <p><i>Exception—misconduct</i></p> <p>(3) Subsections (1) to (1E) do not apply if:</p> <p>(a) the person (the discloser) discloses the information to the Ombudsman or the Integrity Commissioner; and</p> <p>(b) the discloser informs the person to whom the disclosure is made of the discloser’s identity before making the disclosure; and</p> <p>(c) the information concerns:</p> <p>(i) a corruption issue within the meaning of the <i>Law Enforcement Integrity Commissioner Act 2006</i> (see section 7 of that Act) in relation to a controlled operation; or</p> <p>(ii) misconduct in relation to a controlled operation; and</p> <p>(d) the discloser considers that the information may assist a person referred to in paragraph (a) to perform the person’s functions or duties; and</p> <p>(e) the discloser makes the disclosure in good faith.</p> <p>Note: A defendant bears an evidential burden in relation to the matters in this subsection—see subsection 13.3(3) of the <i>Criminal Code</i>.</p> <p><i>Exception—previously published information</i></p> <p>(4) Subsections (1D) and (1E) do not apply to a person disclosing information if:</p> <p>(a) the information has already been communicated, or made available, to the public (the prior publication); and</p> <p>(b) the person was not involved in the prior publication (whether directly or indirectly); and</p> <p>(c) at the time of the disclosure, the person believes that the disclosure:</p> <p>(i) will not endanger the health or safety of any person; and</p>	<p>(c) for the purposes of obtaining legal advice in relation to the controlled operation; or</p> <p>(d) in accordance with any requirement imposed by law; or</p> <p>(e) in connection with the performance of functions or duties, or the exercise of powers, of a law enforcement agency.</p> <p>Note: A defendant bears an evidential burden in relation to the matters in this subsection—see subsection 13.3(3) of the <i>Criminal Code</i>.</p> <p><i>Exceptions—integrity testing controlled operation authority</i></p> <p>(2A) Subsections (1) to (1E) do not apply, in the case of a controlled operation authorised by an integrity testing controlled operation authority (granted on the basis that an integrity testing authority is in effect), if the disclosure was:</p> <p>(a) in any of the circumstances mentioned in paragraphs (2)(a) to (e); or</p> <p>(c) in connection with the administration or execution of Part IABA, or the <i>Law Enforcement Integrity Commissioner Act 2006</i>, in relation to the integrity testing authority; or</p> <p>(d) for the purposes of any disciplinary or legal action in relation to a staff member of a target agency, if arising out of, or otherwise related to, the controlled operation; or</p> <p>(e) in relation to the integrity testing authority:</p> <p>(i) for the purposes of any disciplinary or legal action in relation to a staff member of a target agency, if arising out of, or otherwise related to, an integrity testing operation authorised by the authority; or</p> <p>(ii) to an authority of the Commonwealth, a State or a Territory, if the disclosure relates to the misconduct of an employee or officer of the authority.</p> <p>Note: A defendant bears an evidential burden in relation to the matters in this subsection—see subsection 13.3(3) of the <i>Criminal Code</i>.</p> <p><i>Exception—misconduct</i></p> <p>(3) Subsections (1) to (1E) do not apply if:</p> <p>(a) the person (the discloser) discloses the information to the Ombudsman or the Integrity Commissioner; and</p> <p>(b) the discloser informs the person to whom the disclosure is made of the discloser’s identity before making the disclosure; and</p> <p>(c) the information concerns:</p> <p>(iii) a corruption issue within the meaning of the <i>Law Enforcement Integrity Commissioner Act 2006</i> (see section 7 of that Act) in relation to a controlled operation; or</p> <p>(iv) misconduct in relation to a controlled operation; and</p> <p>(d) the discloser considers that the information may assist a person referred to in paragraph (a) to perform the person’s functions or duties; and</p> <p>(e) the discloser makes the disclosure in good faith.</p> <p>Note: A defendant bears an evidential burden in relation to the matters in this subsection—see subsection 13.3(3) of the <i>Criminal Code</i>.</p> <p><i>Exception—previously published information</i></p> <p>(4) Subsections (1D) and (1E) do not apply to a person disclosing information if:</p> <p>(a) the information has already been communicated, or made available, to the public (the prior publication); and</p> <p>(b) the person was not involved in the prior publication (whether directly or indirectly); and</p> <p>(c) at the time of the disclosure, the person believes that the disclosure:</p> <p>(v) will not endanger the health or safety of any person; and</p>

Section	Current Provision	Redrafted Provision with Exception
	<p>(ii) will not prejudice the effective conduct of a controlled operation; and</p> <p>(d) having regard to the nature, extent and place of the prior publication, the person has reasonable grounds for that belief.</p> <p>Note: A defendant bears an evidential burden in relation to the matters in subsection (4)—see subsection 13.3(3) of the <i>Criminal Code</i>.</p>	<p>(vi) will not prejudice the effective conduct of a controlled operation; and</p> <p>(d) having regard to the nature, extent and place of the prior publication, the person has reasonable grounds for that belief.</p> <p>Note: A defendant bears an evidential burden in relation to the matters in subsection (4)—see subsection 13.3(3) of the <i>Criminal Code</i>.</p> <p><u>Exception—information communicated by persons in the business of reporting news etc</u></p> <p><u>(5) Subsections (1) to (1E) do not apply to a person who communicates, removes, holds or otherwise deals with 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 and documentary media, and:</u></p> <p>(a) <u>at that time, the person believed that engaging in that conduct was in the public interest; or</u></p> <p>(b) <u>the person:</u></p> <p>(i) <u>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 and documentary media; and</u></p> <p>(ii) <u>acted under the direction of a journalist, editor or lawyer who was also a member of the staff of the entity, and who believed that engaging in that conduct was in the public interest.</u></p> <p><u>(6) In a prosecution for an offence under subsections (1) to (1E), the defendant does not bear an evidential burden in relation to the matters in subsection (5), despite subsection 13.3(3) of the Criminal Code.</u></p>
<p>Section 70: Disclosure of information by Commonwealth officers</p> <p>NOTE: This section was repealed by the National Security Legislation Amendment (Espionage and Foreign Interference) Act 2018 (Cth)</p>	<p>(1) A person who, being a Commonwealth officer, publishes or communicates, except to some person to whom he or she is authorized to publish or communicate it, any fact or document which comes to his or her knowledge, or into his or her possession, by virtue of being a Commonwealth officer, and which it is his or her duty not to disclose, commits an offence.</p> <p>(2) A person who, having been a Commonwealth officer, publishes or communicates, without lawful authority or excuse (proof whereof shall lie upon him or her), any fact or document which came to his or her knowledge, or into his or her possession, by virtue of having been a Commonwealth officer, and which, at the time when he or she ceased to be a Commonwealth officer, it was his or her duty not to disclose, commits an offence.</p> <p>Penalty: Imprisonment for 2 years.</p>	<p><u>Section [XX] of Crimes Act: Exemption for repealed section 70</u></p> <p><u>(1) Notwithstanding the repeal of section 70 by s 3 of the National Security Legislation Amendment (Espionage and Foreign Interference) Act 2018, the repealed section 70 does not apply to a person who communicates, removes, holds or otherwise deals with 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 and documentary media, and:</u></p> <p>(a) <u>at that time, the person believed that engaging in that conduct was in the public interest; or</u></p> <p>(b) <u>the person:</u></p> <p>(i) <u>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 and documentary media; and</u></p> <p>(ii) <u>acted under the direction of a journalist, editor or lawyer who was also a member of the staff of the entity, and who believed that engaging in that conduct was in the public interest.</u></p> <p><u>(2) In a prosecution for an offence against subsection (2) of the repealed section 70, the defendant does not bear an evidential burden in relation to the matters in subsection (1), despite subsection 13.3(3) of the Criminal Code.</u></p> <p>Note:</p> <p><u>Subsection (2) of the repealed section 70 may apply to a person by reason of sections 11.2, 11.2A, 11.3, 11.4, 11.5 of the Criminal Code.</u></p> <p><u>(3) This section applies to conduct engaged in prior to the commencement of the National Security Legislation Amendment (Espionage and Foreign Interference) Act 2018.</u></p>
<p>Section 79: Official secrets</p> <p>NOTE: This section was repealed by the National Security Legislation Amendment (Espionage and Foreign Interference) Act</p>	<p>(1) For the purposes of this section, a sketch, plan, photograph, model, cipher, note, document, or article is a prescribed sketch, plan, photograph, model, cipher, note, document or article in relation to a person, and information is prescribed information in relation to a person, if the person has it in his or her possession or control and:</p> <p>(a) it has been made or obtained in contravention of this Part or in contravention of section 91.1 of the Criminal Code;</p> <p>(b) it has been entrusted to the person by a Commonwealth officer or a person holding office under the Queen or he or she has made or obtained it owing to his or her position as a person:</p> <p>(i) who is or has been a Commonwealth officer;</p> <p>(ii) who holds or has held office under the Queen;</p>	<p><u>Section [XXX] of the Crimes Act: Exemption for repealed section 79</u></p> <p><u>(1) Notwithstanding the repeal of section 79 by s 3 the National Security Legislation Amendment (Espionage and Foreign Interference) Act 2018, the repealed section 79 does not apply to a person who communicates, removes, holds or otherwise deals with 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 and documentary media, and:</u></p> <p>(a) <u>at that time, the person believed that engaging in that conduct was in the public interest; or</u></p> <p>(b) <u>the person:</u></p> <p>(i) <u>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</u></p>

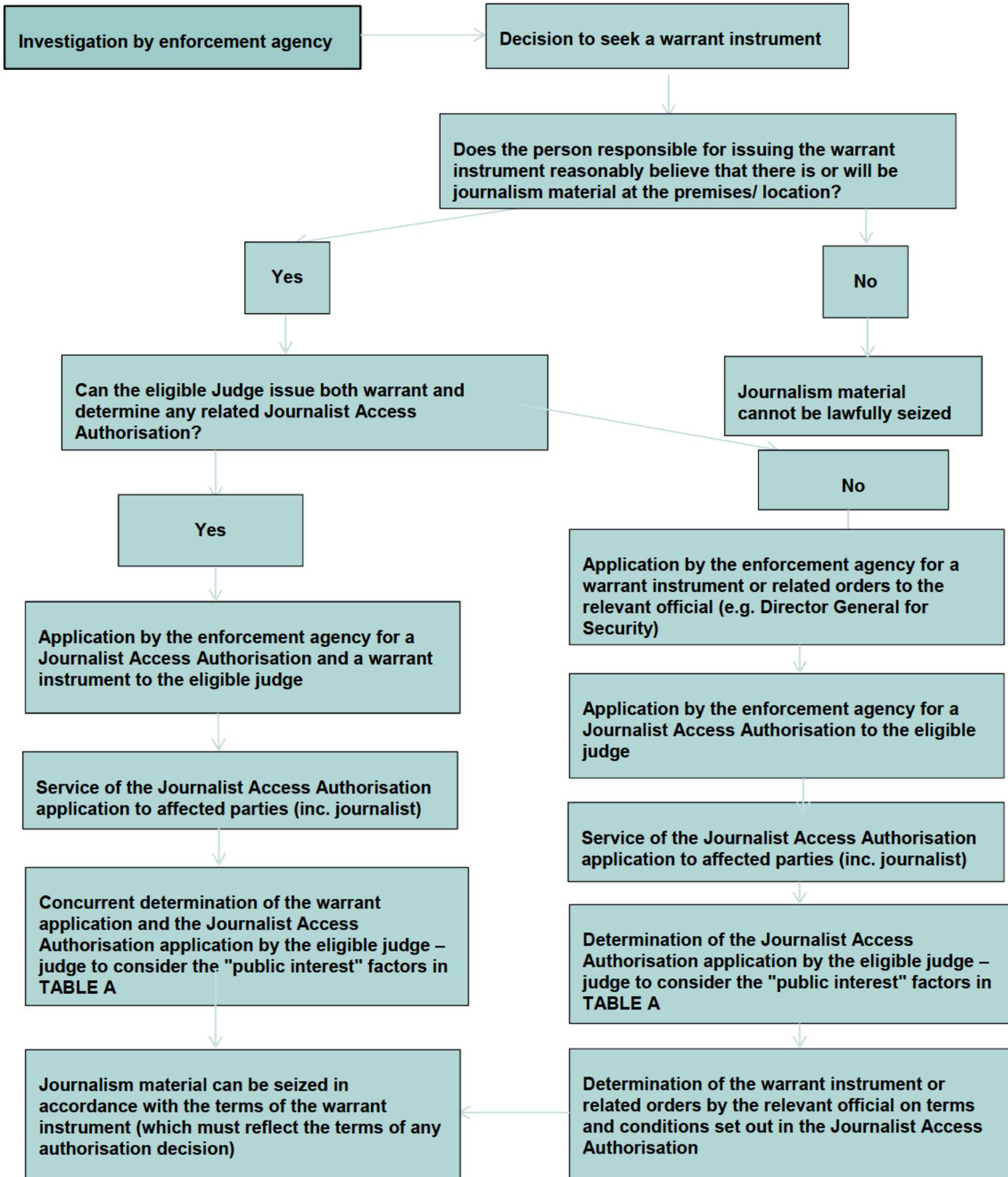
Section	Current Provision	Redrafted Provision with Exception
<p>2018 (Cth)</p>	<p>(iii) who holds or has held a contract made on behalf of the Queen or the Commonwealth;</p> <p>(iv) who is or has been employed by or under a person to whom a preceding subparagraph applies; or</p> <p>(v) acting with the permission of a Minister;</p> <p>and, by reason of its nature or the circumstances under which it was entrusted to him or her or it was made or obtained by him or her or for any other reason, it is his or her duty to treat it as secret; or</p> <p>(c) it relates to a prohibited place or anything in a prohibited place and:</p> <p>(i) he or she knows; or</p> <p>(ii) by reason of its nature or the circumstances under which it came into his or her possession or control or for any other reason, he or she ought to know;</p> <p>that it should not be communicated to a person not authorized to receive it.</p> <p>(2) If a person with the intention of prejudicing the security or defence of the Commonwealth or a part of the Queen's dominions:</p> <p>(a) communicates a prescribed sketch, plan, photograph, model, cipher, note, document or article, or prescribed information, to a person, other than:</p> <p>(i) a person to whom he or she is authorized to communicate it; or</p> <p>(ii) a person to whom it is, in the interest of the Commonwealth or a part of the Queen's dominions, his or her duty to communicate it;</p> <p>or permits a person, other than a person referred to in subparagraph (i) or (ii), to have access to it;</p> <p>(b) retains a prescribed sketch, plan, photograph, model, cipher, note, document or article in his or her possession or control when he or she has no right to retain it or when it is contrary to his or her duty to retain it; or</p> <p>(c) fails to comply with a direction given by lawful authority with respect to the retention or disposal of a prescribed sketch, plan, photograph, model, cipher, note, document or article;</p> <p>he or she commits an indictable offence.</p> <p>Penalty: Imprisonment for 7 years.</p> <p>(3) If a person communicates a prescribed sketch, plan, photograph, model, cipher, note, document or article, or prescribed information, to a person, other than:</p> <p>(a) a person to whom he or she is authorized to communicate it; or</p> <p>(b) a person to whom it is, in the interest of the Commonwealth or a part of the Queen's dominions, his or her duty to communicate it;</p> <p>or permits a person, other than a person referred to in paragraph (a) or (b), to have access to it, he or she commits an offence.</p> <p>Penalty: Imprisonment for 2 years.</p> <p>(4) If a person:</p> <p>(a) retains a prescribed sketch, plan, photograph, model, cipher, note, document or article in his or her possession or control when he or she has no right to retain it or when it is contrary to his or her duty to retain it;</p> <p>(b) fails to comply with a direction given by lawful authority with respect to the retention or disposal of a prescribed sketch, plan, photograph, model, cipher, note, document or article; or</p> <p>(c) fails to take reasonable care of a prescribed sketch, plan, photograph, model, cipher, note, document or article, or prescribed information, or to ensure that it is not communicated to a person not authorized to receive it or so conducts himself or herself as to endanger its safety;</p> <p>he or she commits an offence.</p> <p>Penalty: Imprisonment for 6 months.</p> <p>(5) If a person receives any sketch, plan, photograph, model, cipher, note, document, article or information, knowing</p>	<p><u>in news and documentary media; and</u></p> <p>(ii) <u>acted under the direction of a journalist, editor or lawyer who was also a member of the staff of the entity, and who believed that engaging in that conduct was in the public interest.</u></p> <p><u>(2) In a prosecution for an offence against subsections (2) to (6) of the repealed section 79, the defendant does not bear an evidential burden in relation to the matters in subsection (1), despite subsection 13.3(3) of the Criminal Code.</u></p> <p><u>(3) This section applies to conduct engaged in prior to the commencement of the National Security Legislation Amendment (Espionage and Foreign Interference) Act 2018.</u></p>

Section	Current Provision	Redrafted Provision with Exception
	<p>or having reasonable ground to believe, at the time when he or she receives it, that it is communicated to him or her in contravention of section 91.1 of the Criminal Code or subsection (2) of this section, he or she commits an indictable offence unless he or she proves that the communication was contrary to his or her desire.</p> <p>Penalty: Imprisonment for 7 years.</p> <p>(6) If a person receives any sketch, plan, photograph, model, cipher, note, document, article or information, knowing, or having reasonable ground to believe, at the time when he or she receives it, that it is communicated to him or her in contravention of subsection (3), he or she commits an offence unless he or she proves that the communication was contrary to his or her desire.</p> <p>Penalty: Imprisonment for 2 years.</p> <p>(7) On a prosecution under subsection (2) it is not necessary to show that the accused person was guilty of a particular act tending to show an intention to prejudice the security or defence of the Commonwealth or a part of the Queen's dominions and, notwithstanding that such an act is not proved against him or her, he or she may be convicted if, from the circumstances of the case, from his or her conduct or from his or her known character as proved, it appears that his or her intention was to prejudice the security or defence of the Commonwealth or a part of the Queen's dominions.</p> <p>(8) On a prosecution under this section, evidence is not admissible by virtue of subsection (7) if the magistrate exercising jurisdiction with respect to the examination and commitment for trial of the defendant, or the judge presiding at the trial, as the case may be, is of the opinion that that evidence, if admitted:</p> <ul style="list-style-type: none"> (a) would not tend to show that the defendant intended to prejudice the security or defence of the Commonwealth or a part of the Queen's dominions; or (b) would, having regard to all the circumstances of the case and notwithstanding subsection (9), prejudice the fair trial of the defendant. <p>(9) If evidence referred to in subsection (8) is admitted at the trial, the judge shall direct the jury that the evidence may be taken into account by the jury only on the question whether the defendant intended to prejudice the security or defence of the Commonwealth or a part of the Queen's dominions and must be disregarded by the jury in relation to any other question.</p> <p>(10) A person charged with an offence against subsection (2) may be found guilty of an offence against subsection (3) or (4) and a person charged with an offence against subsection (5) may be found guilty of an offence against subsection (6).</p>	
Defence Act 1903 (Cth)		
<p>Section 73A: Unlawfully giving or obtaining information as to defences</p>	<p>(1) A person who is a member of the Defence Force or a person appointed or engaged under the <i>Public Service Act 1999</i> commits an offence if:</p> <ul style="list-style-type: none"> (a) the person communicates to any other person any plan, document, or information relating to any fort, battery, field work, fortification, or defence work, or to any defences of the Commonwealth, or to any factory, or air force aerodrome or establishment or any other naval, military or air force information; and (b) the communication is not in the course of the first-mentioned person's official duty. <p>(2) A person commits an offence if:</p> <ul style="list-style-type: none"> (a) the person obtains any plan, document, or information relating to any fort, battery, field work, fortification, or defence work, or air force aerodrome or establishment, or to any of the defences of the Commonwealth or any other naval, military or air force information; and (b) that conduct is unlawful. 	<p>(1) A person who is a member of the Defence Force or a person appointed or engaged under the <i>Public Service Act 1999</i> commits an offence if:</p> <ul style="list-style-type: none"> (a) the person communicates to any other person any plan, document, or information relating to any fort, battery, field work, fortification, or defence work, or to any defences of the Commonwealth, or to any factory, or air force aerodrome or establishment or any other naval, military or air force information; and (b) the communication is not in the course of the first-mentioned person's official duty. <p>(2) A person commits an offence if:</p> <ul style="list-style-type: none"> (a) the person obtains any plan, document, or information relating to any fort, battery, field work, fortification, or defence work, or air force aerodrome or establishment, or to any of the defences of the Commonwealth or any other naval, military or air force information; and (b) that conduct is unlawful. <p><u>(3) Subsection (2) does not apply to a person who obtains, communicates, removes, holds or otherwise deals with 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 and documentary media, and:</u></p> <ul style="list-style-type: none"> (a) <u>at that time, the person believed that engaging in that conduct was in the public interest; or</u> (b) <u>the person:</u> <ul style="list-style-type: none"> (i) <u>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 and documentary media; and</u>

Section	Current Provision	Redrafted Provision with Exception
		<p>(ii) <u>acted under the direction of a journalist, editor or lawyer who was also a member of the staff of the entity, and who believed that engaging in that conduct was in the public interest.</u></p> <p><u>(4) In a prosecution for an offence against subsection (2), the defendant does not bear an evidential burden in relation to the matters in subsection (3), despite subsection 13.3(3) of the Criminal Code.</u></p> <p>Note: <u>Section 73A may apply to a person by reason of sections 11.2, 11.2A, 11.3, 11.4, 11.5 of the Criminal Code.</u></p>
Intelligence Services Act 2001 (Cth)		
<p>Section 40: Communication of certain information—ASD</p>	<p>(1) A person commits an offence if:</p> <ul style="list-style-type: none"> (a) the person communicates any information or matter that was acquired or prepared by or on behalf of ASD in connection with its functions or relates to the performance by ASD of its functions; and (b) the information or matter has come to the knowledge or into the possession of the person by reason of: <ul style="list-style-type: none"> (i) his or her being, or having been, a staff member of ASD; or (ii) his or her having entered into any contract, agreement or arrangement with ASD; or (iii) his or her having been an employee or agent of a person who has entered into a contract, agreement or arrangement with ASD; and (c) the communication was not made: <ul style="list-style-type: none"> (i) to the Director-General of ASD or a staff member by the person in the course of the person's duties as a staff member; or (ii) to the Director-General of ASD or a staff member by the person in accordance with a contract, agreement or arrangement; or (iii) by the person in the course of the person's duties as a staff member, within the limits of authority conferred on the person by the Director-General of ASD; or (iv) with the approval of the Director-General of ASD or of a staff member having the authority of the Director-General of ASD to give such an approval. <p>Penalty: Imprisonment for 10 years.</p> <p><i>Exception—information or matter lawfully available</i></p> <p>(2) Subsection (1) does not apply to information or matter that has already been communicated or made available to the public with the authority of the Commonwealth.</p> <p>Note: A defendant bears an evidential burden in relation to the matter in subsection (2): see subsection 13.3(3) of the Criminal Code.</p> <p><i>Exception—communication to the Inspector-General of Intelligence and Security</i></p> <p>(3) Subsection (1) does not apply if the person communicates the information or matter to an IGIS official for the purpose of the Inspector-General of Intelligence and Security exercising a power, or performing a function or duty, under the Inspector-General of Intelligence and Security Act 1986.</p> <p>Note: A defendant bears an evidential burden in relation to the matter in subsection (3): see subsection 13.3(3) of the Criminal Code.</p>	<p>(1) A person commits an offence if:</p> <ul style="list-style-type: none"> (a) the person communicates any information or matter that was acquired or prepared by or on behalf of ASD in connection with its functions or relates to the performance by ASD of its functions; and (b) the information or matter has come to the knowledge or into the possession of the person by reason of: <ul style="list-style-type: none"> (i) his or her being, or having been, a staff member of ASD; or (ii) his or her having entered into any contract, agreement or arrangement with ASD; or (iii) his or her having been an employee or agent of a person who has entered into a contract, agreement or arrangement with ASD; and (c) the communication was not made: <ul style="list-style-type: none"> (i) to the Director-General of ASD or a staff member by the person in the course of the person's duties as a staff member; or (ii) to the Director-General of ASD or a staff member by the person in accordance with a contract, agreement or arrangement; or (iii) by the person in the course of the person's duties as a staff member, within the limits of authority conferred on the person by the Director-General of ASD; or (iv) with the approval of the Director-General of ASD or of a staff member having the authority of the Director-General of ASD to give such an approval. <p>Penalty: Imprisonment for 10 years.</p> <p><i>Exception—information or matter lawfully available</i></p> <p>(2) Subsection (1) does not apply to information or matter that has already been communicated or made available to the public with the authority of the Commonwealth.</p> <p>Note: A defendant bears an evidential burden in relation to the matter in subsection (2): see subsection 13.3(3) of the Criminal Code.</p> <p><i>Exception—communication to the Inspector-General of Intelligence and Security</i></p> <p>(3) Subsection (1) does not apply if the person communicates the information or matter to an IGIS official for the purpose of the Inspector-General of Intelligence and Security exercising a power, or performing a function or duty, under the Inspector-General of Intelligence and Security Act 1986.</p> <p>Note: A defendant bears an evidential burden in relation to the matter in subsection (3): see subsection 13.3(3) of the Criminal Code.</p> <p><u><i>Exception—reporting news</i></u></p> <p><u>(4) Subsection (1) does not apply to a person who obtains, communicates, removes, holds or otherwise deals with 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 and documentary media, and:</u></p> <ul style="list-style-type: none"> (a) <u>at that time, the person believed that engaging in that conduct was in the public interest; or</u> (b) <u>the person:</u> <ul style="list-style-type: none"> (i) <u>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 and documentary media; and</u>

Section	Current Provision	Redrafted Provision with Exception
		<p>(ii) <u>acted under the direction of a journalist, editor or lawyer who was also a member of the staff of the entity, and who believed that engaging in that conduct was in the public interest.</u></p> <p><u>(5) In a prosecution for an offence against subsection (1), the defendant does not bear an evidential burden in relation to the matters in subsection (4), despite subsection 13.3(3) of the Criminal Code.</u></p>

Annexure B



**Table A
Public Interest Factors**

- (a) Importance of preserving confidentiality of sources**
- (b) Importance of facilitating the exchange of information between journalists and members of the public to facilitate reporting of matters in the public interest**
- (c) gravity of the matter**
- (d) the extent to which the information that is sought is likely to assist a current investigation**
- (e) whether reasonable attempts have been made to obtain the information sought by other means;**
- (f) the nature and extent of any conditions or restrictions proposed by the eligible judge**
- (g) any other relevant matter.**

ANNEXURE C

List of Warrants and Authorisations Provisions

Note: The table below is a non-exhaustive list of provisions under which search/interception/seizure orders and other authorisations can be granted. There are dozens, if not hundreds, of pieces of legislation that allow the issuing of warrants and authorisations (e.g. *Fisheries Management Act 1991 s 85*, *Gene Technology Act 2000 ss 172-173*, *Human Services (Medicare) Act 1973 s 8Y*, *Biosecurity Act 2015 s 488*, *Hazardous Waste (Regulation of Exports and Imports) Act 1989 ss 49, 50*).

Legislation	Warrant/Authorisation Type	Issuing Provision(s)	Issuing Officer
<i>Telecommunications (Interception and Access) Act 1979</i>	Telecommunications service warrant	Sections 9, 10, 46	<ul style="list-style-type: none"> Attorney-General, or the Director-General of Security in an emergency (ss 9, 10) Eligible Judge or nominated AAT member (s 46)
	Telecommunications service warrant for collection of foreign intelligence	Section 11A	<ul style="list-style-type: none"> Attorney-General
	Telecommunications service warrant authorising entry on premises	Section 48	<ul style="list-style-type: none"> Eligible Judge Nominated AAT member
	Named person warrant	Sections 9A, 10, 46A	<ul style="list-style-type: none"> Attorney-General, or the Director-General of Security in an emergency (ss 9A, 10) Eligible Judge or nominated AAT member (s 46A)
	Named person warrant for collection of foreign intelligence	Section 11B	<ul style="list-style-type: none"> Attorney-General
	Foreign communications warrant for collection of foreign intelligence	Section 11C	<ul style="list-style-type: none"> Attorney-General
	Stored communications warrant	Section 116	<ul style="list-style-type: none"> Eligible Judge Nominated AAT Member

Legislation	Warrant/Authorisation Type	Issuing Provision(s)	Issuing Officer
			<ul style="list-style-type: none"> Appointed Magistrate
	Journalist information warrant	Sections 170L, 180M and 180T	<ul style="list-style-type: none"> Attorney-General Director-General of Security (in an emergency)
	Authorisation for developing and testing interception capabilities	Section 31A	<ul style="list-style-type: none"> Attorney-General
	Authorisation for access to existing information or documents	Section 175	<ul style="list-style-type: none"> Director-General of Security Deputy Director-General of Security ASIO employee or ASIO affiliate covered by an approval
	Authorisation for access to prospective information or documents	Section 176	<ul style="list-style-type: none"> Director-General of Security Deputy Director-General of Security ASIO employee or ASIO affiliate who holds, or is acting in, a position that is equivalent to, or that is higher than, an SES Band 2 position
	Authorisations for access to existing information or documents – enforcement of the criminal law, locating missing persons, enforcement of a law imposing a pecuniary penalty or protection of the public revenue	Sections 178, 178A, 179	<ul style="list-style-type: none"> Authorised officer of an enforcement agency
	Authorisation for access to prospective information or documents	Section 180	<ul style="list-style-type: none"> Authorised officer of a criminal law enforcement agency
	Authorisations for access to existing information or documents – enforcing foreign or international laws	Section 180A	<ul style="list-style-type: none"> Authorised offer of the AFP

Legislation	Warrant/Authorisation Type	Issuing Provision(s)	Issuing Officer
	Authorisations for access to prospective information or documents – enforcing international laws	Section 180B	<ul style="list-style-type: none"> • Authorised officer of the AFP
	Authorisations to disclose information or documents – enforcing foreign or international laws, enforcement of the criminal law	Sections 180C and 180D	<ul style="list-style-type: none"> • Authorised officer of the AFP
<i>Surveillance Devices Act 2004</i>	Surveillance device warrant	Section 16	<ul style="list-style-type: none"> • Eligible Judge • Nominated AAT member
	Retrieval warrant	Section 24	<ul style="list-style-type: none"> • Eligible Judge • Nominated AAT member
	Computer access warrant	Section 27C	<ul style="list-style-type: none"> • Eligible Judge • Nominated AAT member
	Emergency authorisation for use of a surveillance devices	Section 35	<ul style="list-style-type: none"> • Eligible Judge • Nominated AAT member
	Emergency authorisation for access to data held in a computer	Section 35A	<ul style="list-style-type: none"> • Eligible Judge • Nominated AAT member
	Use and retrieval of tracking devices without warrant	Section 39	<ul style="list-style-type: none"> • Appropriate authorising officer
<i>Crimes Act 1914</i>	Search warrants	Section 3E	<ul style="list-style-type: none"> • Magistrate • Justice of the Peace • Other person employed in a court of a State or Territory

Legislation	Warrant/Authorisation Type	Issuing Provision(s)	Issuing Officer
			who is authorised to issue search warrants
	Delayed notification search warrants	Section 3ZZBD	<ul style="list-style-type: none"> • Judge of the Federal Court of Australia • Judge of the Supreme Court of a State or Territory • Nominated AAT member
	Power to request information or documents about terrorist acts from operators of aircraft or ships	Section 3ZQM	<ul style="list-style-type: none"> • Commissioner of the AFP • Deputy Commissioner of the AFP • Senior executive AFP employee with authorisation
	Power to obtain documents relating to serious terrorism offences	Section 3ZQN	<ul style="list-style-type: none"> • Commissioner of the AFP • Deputy Commissioner of the AFP • Senior executive AFP employee with authorisation
	Power to obtain documents relating to serious offences	Section 3ZQO	<ul style="list-style-type: none"> • Commissioner of the AFP • Deputy Commissioner of the AFP • Senior executive AFP employee with authorisation
<i>Radiocommunications Act 1992</i>	Search warrants	Section 269	<ul style="list-style-type: none"> • Magistrate
<i>Australian Security Intelligence Organisation Act 1979</i>	Search warrants	Sections 25, 29	<ul style="list-style-type: none"> • Attorney-General • Director-General (in an emergency)
	Computer access warrants	Sections 25A, 29	<ul style="list-style-type: none"> • Attorney-General

Legislation	Warrant/Authorisation Type	Issuing Provision(s)	Issuing Officer
			<ul style="list-style-type: none"> • Director-General (in an emergency)
	Surveillance device warrants	Sections 26, 29	<ul style="list-style-type: none"> • Attorney-General • Director-General (in an emergency)
	Inspection of postal and other articles	Sections 27, 27AA, 29	<ul style="list-style-type: none"> • Attorney-General • Director-General (in an emergency)
	Foreign intelligence warrants	Section 27A	<ul style="list-style-type: none"> • Attorney-General
	Identified person warrants	Section 27C	<ul style="list-style-type: none"> • Attorney-General
	Computer access authority under identified person warrant	Section 27E	<ul style="list-style-type: none"> • Attorney-General • Director-General
	Surveillance devices authority under identified person warrant	Section 27F	<ul style="list-style-type: none"> • Attorney-General • Director-General
	Inspection of postal articles authority under identified person warrant	Section 27G	<ul style="list-style-type: none"> • Attorney-General • Director-General
	Inspection of delivery articles authority under identified person warrant	Section 27H	<ul style="list-style-type: none"> • Attorney-General • Director-General
	Power to remove, retain and copy materials	Section 34ZD	<ul style="list-style-type: none"> • Appointed Judge or former Judge

Legislation	Warrant/Authorisation Type	Issuing Provision(s)	Issuing Officer
<i>Proceeds of Crime Act 2002</i>	Production orders	Section 202	• Magistrate
	Search warrants	Sections 225, 230	• Magistrate
	Searches without warrants	Section 251	• Officer