

*Office of National Intelligence Bill - Relationship between section 40 and section 41*

The Department of Prime Minister and Cabinet provides the following additional information to the Committee regarding the proposed relationship between section 40 and section 41 of the Office of National Intelligence Bill (ONI Bill).

*Section 40*

Section 40 of the ONI Bill places obligations on the Director-General of National Intelligence in relation to the use of information provided to ONI under section 37 of the ONI Bill (section 37 information).

The purpose of this section is to restrict the ability of ONI to use such information for purposes other than the performance of its assessment function under paragraph 7(1)(c).

Subsection 40(2) is intended to remove any doubt the performance of ONI's assessment function under paragraph 7(1)(c) includes mentioning or referring to information in an assessment or report, or doing anything else in relation to an assessment or report allowed for under the Act.

So, for example, it would not be necessary (for the purposes of section 40) for ONI to obtain the authorisation of the head of a relevant Commonwealth authority to include section 37 information in an assessment provided to a person or body in the performance of its functions under paragraph 7(1)(i).

However, it may be necessary for ONI to obtain such authorisation pursuant to an arrangement made under subsection 41(1) of the ONI Bill. That is, additional restrictions on the use or subsequent disclosure of section 37 information may apply to ONI under an arrangement made under subsection 41(1) of the ONI Bill.

*Section 41*

Section 41 of the ONI Bill deals with the protection of information, documents or things provided to ONI under Division 1, Part 4 of the ONI Bill. This will include section 37 information.

*Interaction between section 40 and section 41*

Section 40 and section 41 are intended to interact in respect of section 37 information as follows:

- If arrangements have been made with the relevant agency under subsection 41(1)

ONI is required to comply with such arrangements when using section 37 information, subject to the restrictions in section 40 on the use of such information for purposes other than ONI's assessment function under paragraph 7(1)(c).

For example, an arrangement between ONI and another intelligence agency may provide that ONI is required to remove references to particular information when providing a copy of an assessment to a foreign partner.

- If arrangements have not been made with the relevant agency under subsection 41(1)

ONI is required to comply with the requirements in subsection 41(2) when dealing with the information. However, subsection 41(3) provides that this is subject to section 40.

This is intended to ensure that the references to appropriate use or further disclosure in subsection 41(2) are taken to include adhering to the restrictions in section 40 in relation to section 37 information.