

Aide Memoire

Departments and Agencies re WikiLeaks

A number of potential Commonwealth criminal offences exist which may be relevant to material disclosed by WikiLeaks. To assist relevant Department/Agency representatives, the following information is provided as an Aide Memoir for the evaluation of whether the disclosure of material on the WikiLeaks website may be in breach of Australian law.

Potential Criminal Offences

1. Disclosure of information by a Commonwealth Officer – Section 70 Crimes Act 1914.

Material relevant to this offence must be information that has been disclosed by a current or former employee of the Commonwealth.

2. Disclosure or retention of material relevant to official secrets – Section 79 Crimes Act 1914. This includes prescribed information and information relating to prohibited places:

Prescribed information is: a sketch, plan, photograph, model, cipher, note, or document, that has been entrusted to them by a Commonwealth officer.

The following places shall be **prohibited places**:

- (a) any work of defence, arsenal, factory, dockyard, aerodrome, camp, ship, aircraft, telegraph or signal station, or office, belonging to the Queen or the Commonwealth, and any other place belonging to the Queen or the Commonwealth used for the purpose of building, repairing, making, obtaining or storing any ship, aircraft, arms, or materials or instruments for use in time of war, or any plans or documents relating thereto;
- (aa) any camp, barracks or place where prisoners of war, internees or members of the Defence Force are detained;
- (b) any place not belonging to the Queen or the Commonwealth where any ship, aircraft, arms, or materials or instruments of use in time of war, or any plans or documents relating thereto, are being made, repaired, obtained, tested or stored under contract with, or with any person on behalf of, the Queen or the Commonwealth;
- (c) any place belonging to the Queen or the Commonwealth which is for the time being declared by the Governor-General to be a prohibited place for the purposes of this Part on the ground that information with respect thereto, or damage thereto, would be useful to an enemy or to a foreign power; and
- (d) any railway, road, way, or channel, or other means of communication by land or water (including any works or structures being part thereof or connected therewith), or any place used for gas, water, electricity works or other works for purposes of a public character, or any place where any ship, aircraft, arms,

or materials or instruments of use in time of war, or any plans or documents relating thereto, are being made, repaired, obtained, tested or stored otherwise than on behalf of the Queen or the Commonwealth, which is for the time being declared by the Governor-General by proclamation to be a prohibited place for the purposes of this Part, on the ground that information with respect thereto, or the destruction or obstruction thereof, or interference therewith, would be useful to an enemy or to a foreign power.

This offence also applies to a person who may have been given the above and causes it to be published or retains it when they have no right to do so.

The disclosure of the material relevant to this offence need not necessarily be by a Commonwealth Officer.

3: Espionage and similar activity – Division 91 *Criminal Code Act 1995*.

Material relevant to this offence includes information concerning the Commonwealth's security or defence including the operations, capabilities and technologies of, and methods and sources used by, the country's intelligence or security agencies.

This offence may be committed by any person with the specific intent to prejudice Australia's security or defence.

Referral to AFP

Should the respective Department/Agency identify material that may indicate potential breaches of Australian criminal law, the AFP Coordinator Head Office Investigations is to be contacted in the first instance on telephone (02) 61314737.