

ATTACHMENT D – LEGISLATIVE PROVISIONS

ASIO Act – section 35P

Unauthorised disclosure of information

Disclosures by entrusted persons

(1) A person commits an offence if:

- (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.

Penalty: Imprisonment for 5 years.

Note: Recklessness is the fault element for [paragraphs](#) (1)(b) and (d)--see section 5.6 of the *Criminal Code* .

(1A) Strict liability applies to [paragraph](#) (1)(a).

Note: For strict liability, see section 6.1 of the *Criminal Code*.

(1B) A person commits an offence if:

- (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:
 - (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.

Penalty: Imprisonment for 10 years.

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*.

(1C) Strict liability applies to [paragraph](#) (1B)(a).

Note: For strict liability, see section 6.1 of the *Criminal Code* .

Other disclosures

(2) A person commits an offence if:

- (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.

Penalty: Imprisonment for 5 years.

Note: Recklessness is the fault element for paragraphs (2)(b) and (c)--see section 5.6 of the *Criminal Code* .

(2A) A person commits an offence if:

- (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:

(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 person knows that the disclosure will endanger the health or safety of any person or prejudice the effective conduct of a special intelligence operation.

Penalty: Imprisonment for 10 years.

Note: Recklessness is the fault element for paragraph (2A)(b)--see section 5.6 of the *Criminal Code* .

Exceptions

(3) Subsections (1) to (2A) do not apply if the disclosure was:

- (a) in connection with the administration or execution of this Division; or
- (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
- (c) in accordance with any requirement imposed by law; or
- (d) in connection with the performance of functions or duties, or the exercise of powers, of the Organisation; or
- (e) for the purpose of obtaining legal advice in relation to the special intelligence operation; or
- (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
- (g) by an IGIS official in connection with the IGIS official exercising powers, or performing functions or duties, under that Act.

Note: A defendant bears an evidential burden in relation to the matters in this subsection--see subsection 13.3(3) of the *Criminal Code* .

(3A) Subsections (2) and (2A) do not apply to a person disclosing information if:

- (a) the information has already been communicated, or made available, to the public (the **prior publication**); and
- (b) the person was not involved in the prior publication (whether directly or indirectly); and
- (c) at the time of the disclosure, the person believes that the disclosure:
 - (i) will not endanger the health or safety of any person; and
 - (ii) will not prejudice the effective conduct of a special intelligence operation; and

(d) having regard to the nature, extent and place of the prior publication, the person has reasonable grounds for that belief.

Note: A defendant bears an evidential burden in relation to the matters in [subsection](#) (3A)—see [subsection](#) 13.3(3) of the *Criminal Code*.

Extended geographical jurisdiction

(4) Section 15.4 of the *Criminal Code* (extended geographical jurisdiction--category D) applies to an offence against [subsection](#) (1), (1B), (2) or (2A).

(5) [Subsection](#) (4) does not, by implication, affect the interpretation of any other provision of this Act.

Criminal Code Act

Division 122—Secrecy of information

122.1 Communication and other dealings with inherently harmful information by current and former Commonwealth officers etc.

Communication of inherently harmful information

- (1) A person commits an offence if:
- (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.

Note 1: For exceptions to the offences in this section, see section 122.5.

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).

Penalty: Imprisonment for 7 years.

Other dealings with inherently harmful information

- (2) A person commits an offence if:
- (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.

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).

Penalty: Imprisonment for 3 years.

Information removed from, or held outside, proper place of custody

- (3) A person commits an offence if:
- (a) the person:
 - (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.

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).

Penalty: Imprisonment for 3 years.

Failure to comply with direction regarding information

(4) A person commits an offence if:

(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, a Commonwealth officer or otherwise engaged to perform work for a Commonwealth entity.

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).

Penalty: Imprisonment for 3 years.

122.2 Conduct by current and former Commonwealth officers etc. causing harm to Australia's interests

Communication causing harm to Australia's interests

(1) A person commits an offence if:

(a) the person communicates information; and

(b) either:

(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.

Note 1: For the definition of *cause harm to Australia's interests*, see section 121.1.

Note 2: For exceptions to the offences in this section, see section 122.5.

Penalty: Imprisonment for 7 years.

Other conduct causing harm to Australia's interests

(2) A person commits an offence if:

(a) the person deals with information (other than by communicating it); and

(b) either:

- (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.

Penalty: Imprisonment for 3 years.

Information removed from, or held outside, proper place of custody

(3) A person commits an offence if:

(a) the person:

- (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:

- (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.

Penalty: Imprisonment for 3 years.

Failure to comply with direction regarding information

(4) A person commits an offence if:

(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

(d) either:

- (i) the failure to comply causes harm to Australia's interests; or
- (ii) the failure to comply will or is likely to cause harm to Australia's interests; and

(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.

Penalty: Imprisonment for 3 years.

122.3 Aggravated offence

(1) A person commits an offence against this section if:

(a) the person commits an offence against section 122.1 or 122.2 (the *underlying offence*); and

(b) any of the following circumstances exist in relation to the commission of the underlying offence:

- (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;
- (iii) the commission of the underlying offence involves 5 or more records each of which has a security classification;
- (iv) the commission of the underlying offence involves the person altering a record to remove or conceal its security classification;
- (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.

Penalty:

- or
- (a) if the penalty for the underlying offence is imprisonment for 7 years—imprisonment for 10 years;
 - (b) if the penalty for the underlying offence is imprisonment for 3 years—imprisonment for 5 years.
- (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.
- (4) To avoid doubt:
- (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
 - (b) a person may be convicted of an offence against this section even if the person has not been convicted of the underlying offence.

122.4 Unauthorised disclosure of information by current and former Commonwealth officers etc.

- (1) A person commits an offence if:
 - (a) the person communicates information; and
 - (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
 - (c) the person is under a duty not to disclose the information; and
 - (d) the duty arises under a law of the Commonwealth.

Penalty: Imprisonment for 2 years.

- (2) Absolute liability applies in relation to paragraph (1)(d).

Sunset provision

- (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.

122.4A Communicating and dealing with information by non-Commonwealth officers etc.

Communication of information

- (1) A person commits an offence if:
- (a) the person communicates information; and
 - (b) the information was not made or obtained by the person by reason of the person being, or having been, a Commonwealth officer or otherwise engaged to perform work for a Commonwealth entity; and
 - (c) the information was made or obtained by another person by reason of that other person being, or having been, a Commonwealth officer or otherwise engaged to perform work for a Commonwealth entity; and
 - (d) any one or more of the following applies:
 - (i) the information has a security classification of secret or top secret;
 - (ii) the communication of the information damages the security or defence of Australia;
 - (iii) the communication of the information interferes with or prejudices the prevention, detection, investigation, prosecution or punishment of a criminal offence against a law of the Commonwealth;
 - (iv) the communication of the information harms or prejudices the health or safety of the Australian public or a section of the Australian public.

Note 1: For exceptions to the offences in this section, see section 122.5.

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).

Penalty: Imprisonment for 5 years.

Other dealings with information

- (2) A person commits an offence if:
- (a) **the person deals with information (other than by communicating it)**; and
 - (b) the information was not made or obtained by the person by reason of the person being, or having been, a Commonwealth officer or otherwise engaged to perform work for a Commonwealth entity; and
 - (c) the information was made or obtained by another person by reason of that other person being, or having been, a Commonwealth officer or otherwise engaged to perform work for a Commonwealth entity; and
 - (d) any one or more of the following applies:
 - (i) the information has a security classification of secret or top secret;
 - (ii) the dealing with the information damages the security or defence of Australia;
 - (iii) the dealing with the information interferes with or prejudices the prevention, detection, investigation, prosecution or punishment of a criminal offence against a law of the Commonwealth;
 - (iv) the dealing with the information harms or prejudices the health or safety of the Australian public or a section of the Australian public.

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).

Penalty: **Imprisonment for 2 years.**

Proof of identity not required

(3) In proceedings for an offence against this section, the prosecution is not required to prove the identity of the other person referred to in paragraph (1)(c) or (2)(c).

122.5 Defences

Powers, functions and duties in a person's capacity as a public official etc. or under arrangement

(1) It is a defence to a prosecution for an offence by a person against this Division that:

(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

(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.

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)).

Information that is already public

(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.

Note: A defendant bears an evidential burden in relation to the matters in this subsection (see subsection 13.3(3)).

Information communicated etc. to integrity agency

(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:

(a) to any of the following:

- (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 *Inspector-General of Intelligence and Security Act 1986*;
- (ii) the Commonwealth Ombudsman, or another officer within the meaning of subsection 35(1) of the *Ombudsman Act 1976*;
- (iia) the Australian Information Commissioner, a member of the staff of the Office of the Australian Information Commissioner, or a consultant engaged under the *Australian Information Commissioner Act 2010*;
- (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 *Law Enforcement Integrity Commissioner Act 2006*; 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.

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)).

Information communicated etc. in accordance with the Public Interest Disclosure Act 2013 or the Freedom of Information Act 1982

(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:

- (a) the *Public Interest Disclosure Act 2013*; or
- (b) the *Freedom of Information Act 1982*.

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)).

Information communicated etc. for the purpose of reporting offences and maladministration

(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:

- (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:
 - (i) the *Australian Federal Police Act 1979*; or
 - (ii) the *Proceeds of Crime Act 2002*.

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)).

Information communicated etc. to a court or tribunal

(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).

Note: A defendant bears an evidential burden in relation to the matters in this subsection (see subsection 13.3(3)).

Information communicated etc. for the purposes of obtaining or providing legal advice

(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:

- (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;

whether that advice was obtained or provided before or after the person engaged in the conduct constituting the offence.

Note: A defendant bears an evidential burden in relation to the matters in this subsection (see subsection 13.3(3)).

Information communicated etc. by persons engaged in business of reporting news etc.

(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:

(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:

- (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)).

Note: A defendant bears an evidential burden in relation to the matters in this subsection (see subsection 13.3(3)).

(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:

(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.

Information that has been previously communicated

(8) It is a defence to a prosecution for an offence by a person against this Division if:

(a) the person did not make or obtain the relevant information by reason of any of the following:

- (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;
- (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 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 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

(e) having regard to the nature, extent and place of the prior publication, the person has reasonable grounds for that belief.

Note: A defendant bears an evidential burden in relation to the matters in this subsection (see subsection 13.3(3)).

Information relating to a person etc.

(9) It is a defence to a prosecution for an offence by a person against this Division if:

(a) the person did not make or obtain the relevant information by reason of any of the following:

- (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;
- (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) 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

(c) having regard to the circumstances of the making or obtaining of the information, the person has reasonable grounds for that belief; and

(d) any of the following apply:

- (i) the person communicates the information to the person to whom the information relates;
- (ii) the person is the person to whom the information relates;
- (iii) the communication, removal, holding or dealing is in accordance with the express or implied consent of the person to whom the information relates.

Note: A defendant bears an evidential burden in relation to the matters in this subsection (see subsection 13.3(3)).

(10) To avoid doubt, a defence to an offence may constitute an authorisation for the purposes of paragraph (9)(b).

Removing, holding or otherwise dealing with information for the purposes of communicating information

(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.

Burden of proof for integrity agency officials

(12) Despite subsection 13.3(3), in a prosecution for an offence against this Division, a person mentioned in subparagraph (3)(a)(i), (ii), (ia) or (iii) does not bear an evidential burden in relation to the matter in:

(a) subsection (1), (4) or (4A); or

(b) either of the following:

- (i) subparagraph (3)(a)(i), (ii), (ia) or (iii);

- (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.

Defences do not limit each other

- (13) No defence in this section limits the operation of any other defence in this section.

*ARTK Note – there is no similar defence to the espionage offences at Part 5.2 of the Criminal Code Act

121.1 Definitions

- (1) In this Part:

cause harm to Australia's interests means to:

- (a) interfere with or prejudice the prevention, detection, investigation, prosecution or punishment of a criminal offence against a law of the Commonwealth; or

- (b) interfere with or prejudice the performance of functions of the Australian Federal Police under:

- (i) paragraph 8(1)(be) of the *Australian Federal Police Act 1979* (protective and custodial functions); or
- (ii) the *Proceeds of Crime Act 2002*; or

- (c) ***harm or prejudice Australia's international relations in relation to information that was communicated in confidence:***

- (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.

inherently harmful information means information that is any of the following:

- (a) security classified information;
- (c) 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.

deal: a person ***deals*** with information or an article if the person does any of the following in relation to the information or article:

- (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.

make available information or an article includes:

- (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).

Criminal Code Act – section 119.7

Recruiting persons to serve in or with an armed force in a foreign country

Recruiting others to serve with foreign armed forces

(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.

Penalty: Imprisonment for 10 years.

Publishing recruitment advertisements

(2) A person commits an offence if:

(a) the person publishes in Australia:

- (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.

Penalty: Imprisonment for 10 years.

(3) A person commits an offence if:

(a) the person publishes in Australia:

- (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:

- (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.

Penalty: Imprisonment for 10 years.

Criminal Code Act – section 80.2C

Advocating terrorism

- (1) A person commits an offence if:
 - (a) the person advocates:
 - (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:
 - (i) engage in a terrorist act; or
 - (ii) commit a terrorism offence referred to in subsection (2).

Note: There is a defence in section 80.3 for acts done in good faith.

Penalty: Imprisonment for 5 years.

- (2) A terrorism offence is referred to in this subsection if:
 - (a) the offence is punishable on conviction by imprisonment for 5 years or more; and
 - (b) the offence is not:
 - (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).

Definitions

- (3) In this section:

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.

terrorism offence has the same meaning as in subsection 3(1) of the *Crimes Act 1914*.

terrorist act has the same meaning as in section 100.1.

- (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:
 - (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.

Crimes Act 1914 – Section 15HK

Unauthorised disclosure of information (controlled operations)

Disclosures by entrusted persons

(1) A person commits an [offence](#) if:

- (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.

Note: Recklessness is the fault element for [paragraphs](#) (1)(b) and (d)--see section 5.6 of the *Criminal Code* .

[Penalty](#): Imprisonment for 2 years.

(1A) Strict liability applies to [paragraph](#) (1)(a).

Note: For strict liability, see section 6.1 of the *Criminal Code* .

(1B) A person commits an [offence](#) if:

- (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:
 - (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.

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* .

[Penalty](#): Imprisonment for 10 years.

(1C) Strict liability applies to [paragraph](#) (1B)(a).

Note: For strict liability, see section 6.1 of the *Criminal Code* .

Other disclosures

(1D) A person commits an [offence](#) if:

(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.

Note: Recklessness is the fault element for [paragraphs](#) (1D)(b) and (c)--see section 5.6 of the *Criminal Code* .

[Penalty](#): Imprisonment for 2 years.

(1E) A person commits an [offence](#) if:

(a) the person discloses [information](#); and

(b) the [information](#) relates to a controlled operation; and

(c) either or both of the following subparagraphs apply:

(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.

Note: Recklessness is the fault element for [paragraph](#) (1E)(b)--see section 5.6 of the *Criminal Code* .

[Penalty](#): Imprisonment for 10 years.

Exceptions--general

(2) [Subsections](#) (1) to (1E) do not apply if the disclosure was:

(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

(c) for the purposes of obtaining legal advice in relation to the controlled operation; or

(d) in accordance with any requirement imposed by law; or

(e) in connection with the performance of [functions](#) or duties, or the exercise of powers, of a [law enforcement agency](#).

Note: A defendant bears an evidential burden in relation to the matters in this [subsection](#)--see [subsection](#) 13.3(3) of the *Criminal Code* .

Exceptions--integrity testing controlled operation authority

(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:

- (a) in any of the circumstances mentioned in [paragraphs](#) (2)(a) to (e); or
- (b) in connection with the administration or execution of Part IABA, or the [Law Enforcement Integrity Commissioner Act 2006](#), in relation to the integrity testing authority; or
- (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
- (d) in relation to the integrity testing authority:
 - (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
 - (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.

Note: A defendant bears an evidential burden in relation to the matters in this [subsection](#)-- see [subsection](#) 13.3(3) of the *Criminal Code* .

Exception--misconduct

- (3) [Subsections](#) (1) to (1E) do not apply if:
 - (a) the person (the *discloser*) discloses the [information](#) to the Ombudsman or the Integrity [Commissioner](#); and
 - (b) the discloser [informs](#) the person to whom the disclosure is made of the discloser's identity before making the disclosure; and
 - (c) the [information](#) concerns:
 - (i) a corruption issue within the meaning of the [Law Enforcement Integrity Commissioner Act 2006](#) (see section 7 of that Act) in relation to a controlled operation; or
 - (ii) misconduct in relation to a controlled operation; and
 - (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
 - (e) the discloser makes the disclosure in good faith.

Note: A defendant bears an evidential burden in relation to the matters in this [subsection](#)-- see [subsection](#) 13.3(3) of the Criminal Code.

Exception--previously published [information](#)

- (4) [Subsections](#) (1D) and (1E) do not apply to a person disclosing [information](#) if:
 - (a) the [information](#) has already been communicated, or made available, to the public (the prior publication); and

(b) the person was not involved in the prior publication (whether directly or indirectly); and

(c) at the time of the disclosure, the person believes that the disclosure:

(i) will not endanger the health or safety of any person; and

(ii) will not prejudice the effective conduct of a controlled operation; and

(d) having regard to the nature, extent and place of the prior publication, the person has reasonable grounds for that belief.

Note: A defendant bears an evidential burden in relation to the matters in [subsection \(4\)](#)-- see [subsection 13.3\(3\)](#) of the *Criminal Code* .

Crimes Act 1914 – Section 3ZZHA

Unauthorised disclosure of information (delayed notification search warrants)

(1) A person commits an [offence](#) if:

(a) the person discloses [information](#); and

(b) the [information](#) relates to:

(i) an application for a delayed notification search warrant; or

(ii) the execution of a delayed notification search warrant; or

(iii) a report under section 3ZZFA in relation to a delayed notification search warrant;

or

(iv) a warrant premises occupier's notice or an adjoining premises occupier's notice prepared in relation to a delayed notification search warrant.

[Penalty](#): Imprisonment for 2 years.

(2) Each of the following is an exception to the [offence](#) created by [subsection](#) (1):

(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:

(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.

Note: A defendant bears an evidential burden in relation to a matter in [subsection](#) (2)-- see [subsection](#) 13.3(3) of the *Criminal Code* .