

**PROPOSED 'PUBLIC INTEREST' EXCEPTION
TO SECTION 35P OF THE
NATIONAL SECURITY LEGISLATION AMENDMENT BILL (NO. 1) 2014**

Section 35P Unauthorised disclosure of information

Unauthorised disclosure of information

- (1) A person commits an offence if:
- (a) the person discloses information; and
 - (b) the information relates to a special intelligence operation.

Penalty: Imprisonment for 5 years.

Note: Recklessness-Knowledge is the fault element for the circumstances described in paragraph (1)(b) – See section 5.6 of the *Criminal Code*.

Unauthorised disclosure of information—endangering safety, etc.

- (2) A person commits an offence if:
- (a) the person discloses information; and
 - (b) the information relates to a special intelligence operation; and
 - (c) either:
 - (i) the person intends to endanger the health or safety of any person or prejudice the effective conduct of a special intelligence operation; or
 - (ii) the disclosure of the information 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-Knowledge is the fault element for the circumstances described in paragraph (2)(b) and (2)(c)– See section 5.6 of the *Criminal Code*.

Exceptions

- (3) Subsections (1) and (2) 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 the Act; or
 - (e) made in good faith in a report or commentary published about a matter of public interest by a person engaged in a professional capacity as a journalist, where the report or commentary does not disclose, directly or by inference, the identity of a security officer.**

(4) Without limiting the generality of subsection 3(e), a disclosure is *about a matter of public interest* for the purposes of that subsection if it is or relates to:

- (a) A matter that increases the ability of the public to scrutinise issues of national security, including security activities or Government policy; or
- (b) A matter that contributes to the public debate on national security matters or related issues.
- (c) Conduct that, but for the provisions of this Act:
 - a. contravenes a law of the Commonwealth, a State or a Territory
 - b. contravenes a law of a foreign country;
 - c. perverts, or is engaged in for the purpose of perverting, or attempting to pervert, the course of justice;
 - d. involves, or is engaged in for the purpose of, corruption of any other kind;
 - e. constitutes maladministration;
 - f. is an abuse of public trust;
 - g. involves, or is engaged in for the purpose of, a public official abusing his or her position as a public official;
 - h. could, if proved, give reasonable grounds for disciplinary action against a public official.

Note: A defendant bears an evidential burden in relation to the matters in this subsection—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) or (2).
- (5) Subsection (4) does not, by implication, affect the interpretation of any other provision of this Act.