



Australian Government

Attorney-General's Department

March 2023

Review of Secrecy Provisions

Consultation Paper

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Executive Summary

On 22 December 2022, the Attorney-General, the Hon Mark Dreyfus KC MP, announced that the Attorney-General's Department (the department) had commenced a Review of Commonwealth secrecy provisions (the Review). The Review's terms of reference are at **Attachment A**.

Secrecy offences play a legitimate and important role where unauthorised communications or other dealings with Commonwealth information may cause harm to essential public interests, such as national security and the safety of the public. These public interests need to be considered alongside the public interest in open and accountable government.

General secrecy offences are in Part 5.6 of the *Criminal Code Act 1995* (Criminal Code) and apply to all current and former Commonwealth officers and those who receive information from the Commonwealth. Specific secrecy offences apply to particular information, agencies or individuals. For the purposes of this review, references to specific secrecy offences also includes non-disclosure duties that apply to current and former Commonwealth officers and attract criminal liability through the operation of section 122.4 of the Criminal Code.

While general secrecy offences in the Criminal Code were updated in 2018, multiple reviews have raised concerns about the number, inconsistency, and complexity of specific secrecy offences in a range of Commonwealth laws. To help inform the Review and report to Government, the department seeks views on:

- the suitability and appropriate framing of the general and specific secrecy offences in Commonwealth legislation, having particular regard to:
 - the principles outlined in the 2009 ALRC report [Secrecy Laws and Open Government in Australia](#) (ALRC Report); and
 - other relevant principles, including but not limited to those set out in the [Guide to Framing Commonwealth Offences, Infringement Notices and Enforcement Powers](#)
- any specific secrecy offences in Commonwealth legislation that are no longer required in light of the introduction of the general secrecy offences in the Criminal Code
- any amendments that are necessary to adequately protect public interest journalism balanced against other essential public interests.

To assist, a comprehensive list of the general and specific secrecy offences and non-disclosure duties has been published on the department's webpage and are also listed at **Attachment B**.

Scope of this consultation

Under the Review's terms of reference, the department will not be reporting on amendments to the secrecy offences in the *National Security Information (Criminal and Civil Proceedings) Act 2004*. At the request of the Attorney-General, the Independent National Security Legislation Monitor is currently undertaking a review of that Act and will report to Government by 31 October 2023.

In addition to seeking public submissions, the department is also consulting with other Commonwealth government departments in relation to specific secrecy offences and non-disclosure duties within each portfolio. Further, the department has undertaken consultations on the adequacy of protections for individuals who provide information to Royal Commissions. The department has provided an interim report to Government on this element of the Review, which will help inform the final report to Government.

Secrecy provisions interact with a range of other statutory regimes that govern disclosure and protection of government information. The department notes that other consultation processes relevant but separate to the Secrecy Provisions Review have also been announced. This includes consultations on reforms to the *Public Interest Disclosure Act 2013* to support public sector whistleblowers, and consultations to inform the Government response to the report of the review of the *Privacy Act 1988*. Separate information about these consultations is available on the department's website.

[Further information](#)

Submissions to the Review are due by **5 May 2023**. Further details about making submissions are available on the department's webpage.

List of consultation questions

As outlined in the Review's terms of reference, the department is seeking views on the operation of secrecy offences in Commonwealth laws, including views on the framing of general and specific secrecy offences.

The department welcomes comments on any aspect of secrecy offences to inform the department's final report to Government, including but not limited to the following questions. References in the questions to specific secrecy offences include non-disclosure duties that operate as specific secrecy offences.

Part 1: Overview of secrecy provisions in Commonwealth law

1. What principles should govern the framing of general secrecy offences and specific secrecy offences, including the categories of persons and information to which it is appropriate for each of these types of offences to apply?
2. Having regard to these principles, are there any general or specific secrecy offences that should be amended or repealed?
 - a. For any of these offences, are there other forms of action (such as civil or administrative action) that would be more appropriate to protect against unlawful communication or other dealing with the information?
3. Are there circumstances in which it is appropriate for a specific secrecy offence to prohibit conduct that is also prohibited by a general secrecy offence?
4. Are the current defences for general secrecy offences available under section 122.5 of the Criminal Code appropriately framed? Are there any amendments or additions to these defences that should be considered?
5. Are there any defences that should generally be available for specific secrecy offences? Are there amendments or additions to defences for specific secrecy offences that should be considered?

Part 2: Public interest journalism

6. What principles should determine how the public interest journalism defence to the general secrecy offences in Part 5.6 of the Criminal Code is framed?
7. Having regard to those principles, is the current public interest journalism defence in Part 5.6 of the Criminal Code appropriately framed? If not, what amendments should be considered?
8. Should the public interest journalism defence to the general secrecy offences in Part 5.6 of the Criminal Code identify factors that may be considered for the purposes of determining whether the communication or other dealing with the information may be in the public interest?

9. Should a public interest journalism defence modelled on subsection 122.5(6) of the Criminal Code be considered for specific secrecy offences, and for which offences would it be an appropriate defence?
10. Should the requirement for the Attorney-General's consent to prosecute a journalist for certain offences, which is currently imposed by a ministerial direction, be maintained? If so, should this requirement be legislated?

Part 1: Overview of secrecy provisions in Commonwealth law

There are a range of reasons that governments seek to protect information, including for personal privacy, Cabinet confidentiality, public health, national security and law enforcement purposes. These interests need to be considered alongside the public interest in an open and accountable government. Secrecy provisions are one mechanism to protect information and they include provisions that impose confidentiality obligations on individuals or entities in relation to the handling of Commonwealth information.¹

As of January 2023, the landscape of Commonwealth secrecy provisions² comprises:

- **11 general secrecy offences** in the Criminal Code
- **542 specific secrecy offences** in 178 Commonwealth laws
- **296 non-disclosure duties** in 107 Commonwealth laws that attract criminal liability through the operation of section 122.4 of the Criminal Code
- **21 override provisions** in 18 Commonwealth laws that operate to exclude secrecy provisions in other Commonwealth laws.

A list of Commonwealth of these secrecy provisions is available at **Attachment B**.

General secrecy offences

Part 5.6 of the Criminal Code contains 11 general secrecy offences that protect against harm caused by the unauthorised communication of, or other dealings with, government information or protect information that forms part of a limited category of inherently harmful information (such as security classified information) or that would otherwise cause harm to Australia's interests. Part 5.6 was inserted into the Criminal Code in 2018 in response to recommendations of the ALRC Report to update and replace sections 70 and 79 of the *Crimes Act 1914*.³ These new general secrecy offences in the Criminal Code commenced on 29 December 2018. There have been no prosecutions in relation to these new offences.

These criminal offences apply generally to current and former Commonwealth officers, and those who receive information from the Commonwealth.

A Commonwealth officer is defined in Part 5.6 of the Criminal Code and includes a range of individuals employed or engaged by the Commonwealth, including Australian Public Service employees and contracted service providers. The definition also includes individuals appointed or employed by the Commonwealth other than under the *Public Service Act 1999* including Commonwealth ministers, statutory office holders and individuals employed by the Commonwealth under other legislation such as the *Members of Parliament (Staff) Act 1984*.⁴ The general secrecy offences specifically exclude individuals employed by Australian Broadcasting Commission (ABC) or Special Broadcasting Service Corporation (SBS) from the definition of Commonwealth officer. This appropriately recognises that members of the ABC and SBS, while being public employees, are engaged primarily in journalism and media activities.

¹ Secrecy Laws and Open Government in Australia, ALRC Report, p. 34.

² A March 2021 survey of Commonwealth secrecy legislation found 11 general secrecy offences, 487 specific secrecy offences in Commonwealth legislation and over 200 non-disclosure duties. Additional provisions have been identified from legislation enacted since March 2021, and further review in consultation with departments.

³ *National Security Legislation Amendment (Espionage and Foreign Interference) Act 2018* (EFI Act).

⁴ Section 121.1 of the Criminal Code.

The general **secrecy offences applying to current and former Commonwealth officers** prohibit:

- communication of inherently harmful information (section 122.1(1)) or information which causes, will cause or is likely to cause harm to Australia's interests (section 122.2(1)). These offences carry a maximum penalty of 7 years' imprisonment.
- dealing with inherently harmful information (section 122.1(2)) or information that causes, will cause or is likely to cause harm to Australia's interests (section 122.2(2)). 'Deals with' covers a wide range of conduct as defined in Part 5.2 of the Criminal Code, such as receiving, possessing or making the information available. These offences carry a maximum penalty of 3 years' imprisonment.
- movement of inherently harmful information outside the proper place of custody (section 122.1(3)) or information outside the proper place of custody where this conduct causes, will cause or is likely to cause harm to Australia's interests (section 122.2(3)). These offences carry a maximum penalty of 3 years' imprisonment.⁵
- failure to comply with a direction about the retention, use or disposal of inherently harmful information (section 122.1(4)) or failure to comply with a direction about the retention, use or disposal of information where this causes, will cause or is likely to cause harm to Australia's interests (section 122.2(4)). These offences carry a maximum penalty of 3 years' imprisonment.

An aggravated offence (section 122.3) applies where a person commits an underlying offence against section 122.1 or 122.2 and the commission of the underlying offence involves aggravating circumstances. These circumstances are described in section 122.3(b) and include, for example, the person altering a record to remove or conceal its security classification. An aggravated offence carries a higher maximum penalty of 10 years (if the maximum underlying penalty is 7 years) or 5 years (if the maximum underlying penalty is 3 years).

Subsequent (third party) disclosure offences generally apply where a third party makes a disclosure of Commonwealth information that the third party received from a Commonwealth officer or a person engaged to perform work for a Commonwealth entity. These prohibit communicating (subsection 122.4A(1)) or otherwise dealing with (subsection 122.4A(2)) certain information, such as secret or top secret information, that was made or obtained by another person who is, or was, a Commonwealth officer.

Defences

In addition to defences available under Part 2.3 of the Criminal Code, section 122.5 sets out a number of defences to the general secrecy offences. The following defences are available:

- exercising a power, function or duty in the person's capacity as a public official
- the information is already public
- the information is communicated to: a Commonwealth oversight or integrity agency, court or tribunal; for the purpose of reporting a criminal offence or maladministration relating to Commonwealth criminal process; in accordance with the *Public Interest Disclosure Act 2013* (PID Act) or the *Freedom of Information Act 1982* (FOI Act)
- information is communicated for the purpose of obtaining or providing legal advice
- information is communicated by persons engaged in the business of reporting news in the public interest (this is discussed further in Part 2 of this consultation paper).
- Information is communicated with the consent of the person to whom it relates, or is communicated by the person to whom it relates.

⁵ Regulations to define proper place of custody are yet to be made.

There is no difference in the legal effect between a defence and an exception. In both cases, the defendant is required to discharge the evidential burden.⁶

Specific secrecy offences and non-disclosure duties

Specific secrecy offences apply in addition to the general secrecy offences and permit secrecy obligations to be tailored to particular information, agencies or individuals. For example, specific secrecy offences that protect personal, commercial, national security or law enforcement information. Often specific secrecy offences are created in legislation establishing an agency or a regulatory scheme, in order to govern the handling and protection of information. Specific secrecy offences may outline a range of exceptions or defences such as circumstances permitting disclosures made in the performance of an official’s duties; disclosures to an integrity body or for the purposes of seeking professional advice (such as legal advice); or disclosures authorised by an agency head for a particular purpose.

Non-disclosure duties establish a duty not to disclose or otherwise deal with certain information. Section 122.4 of the Criminal Code imposes criminal liability for the breach of a non-disclosure duty by current or former Commonwealth officers, where the non-disclosure duty arises under a Commonwealth law. For the purposes of the Review, these non-disclosure duties are categorised as a separate sub-group of specific secrecy offences. The defences that apply in relation to these provisions include those defences provided in section 122.5 of the Criminal Code (outlined above at page 8 of the paper).

Section 122.4 will sunset on 29 December 2023. This was recommended by the Parliamentary Joint Committee on Intelligence and Security (PJCIS) inquiry which considered the proposed general secrecy offences in 2018, and was included as a government amendment to the National Security Legislation Amendment (Espionage and Foreign Interference) Bill 2017.⁷ The purpose of the sunset clause was to preserve the operation of non-disclosure duties until each duty could be reviewed to determine whether it should be converted into a stand-alone specific secrecy offence or that criminal liability is no longer required.

Specific secrecy offences and non-disclosure duties by portfolio

Specific secrecy offences are included within a range of laws across all Commonwealth portfolios.

Portfolio	Number of provisions		
	Specific secrecy offences	Non-disclosure duties	Total
Attorney-General	167	87	254
Health and Aged Care	81	30	111
Treasury	44	27	71
Home Affairs	38	28	66
Infrastructure, Transport, Regional Development, Communications and the Arts	31	20	51
Social Services	40	6	46
Climate Change, Energy, Environment and Water	26	19	45

⁶Section 13.3 of the Criminal Code.

⁷ Recommendation 23, PJCIS *Advisory Report on the National Security Legislation Amendment (Espionage and Foreign Interference) Bill 2017* (2018).

Portfolio	Number of provisions		
	Specific secrecy offences	Non-disclosure duties	Total
Industry, Science and Resources	12	25	37
Prime Minister and Cabinet	18	12	30
Defence (including Veterans' Affairs)	23	23	46
Agriculture, Fisheries and Forestry	15	6	21
Finance	11	7	18
Employment and Workplace Relations	12	45	1
Education	13	0	13
Foreign Affairs and Trade	11	1	12
TOTAL	542	296	838

Figure 1: Number of secrecy provisions administered by portfolios

Types of information protected by specific secrecy offences and non-disclosure duties

Commonwealth information includes information generated, collected and held by the Commonwealth. Specific secrecy offences and non-disclosure duties are enacted to protect a range of categories of Commonwealth information. For the Review, the following categories are used:

- **Personal information** which includes information about an identified individual or an individual who is reasonably identifiable. This can include identifying information such as names, phone numbers or addresses, bank details or health information.
- **Confidential and other information** captures information that is confidential, such as information that is communicated in confidence or is subject to a confidentiality clause or court order, or is protected for the purposes of an Act. This can include duties to protect confidentiality of Cabinet information and some information obtained in the course of providing legal representation. Other information includes research information, transport security information, findings of a body or tribunal, evidence or culturally sensitive information.
- **Law enforcement information** which includes information that is generated by law enforcement officers and organisations.
- **Any information** which captures all information that is acquired in the course of carrying out the functions and duties under an Act. For example, a range of integrity and oversight agencies have strict secrecy offences that prohibit the unlawful disclosure of any information relating to the performance of functions or duties of that agency.
- **National security information** which includes information that relates to, or disclosure of which will affect, national security. This includes information from intelligence agencies.
- **Commercial information** which includes information relating to corporate entities or individuals, which if disclosed, could prejudice commercial interests.

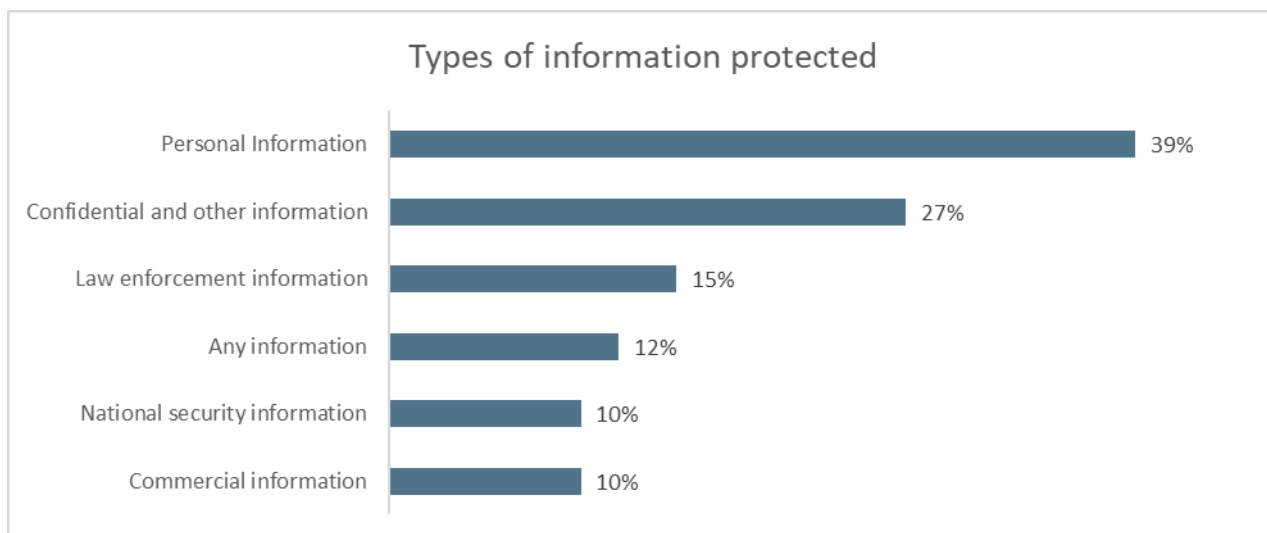


Figure 2: Types of information protected by specific secrecy offences and non-disclosure duties

A number of provisions protect multiple types of information (127 provisions); where this is the case, provisions have been recorded against each category of information protected.

Categories of people covered by specific secrecy offences and non-disclosure duties

The majority of specific secrecy offences and non-disclosure duties apply to individuals who are current or former Commonwealth officers, or are dealing with Commonwealth information.

In relation to specific secrecy offences and non-disclosure duties, there is variation in the approach taken to describing who these offences may apply to, including a number of offences that apply to 'any' person. Other specific secrecy offences may specify that they apply to individuals employed under the *Public Service Act 1999*, Commonwealth ministers, individuals employed by Commonwealth agencies or statutory corporations, and statutory officer holders or individuals who have been contracted to provide a service for or on behalf of the Commonwealth.

Some specific secrecy offences also apply to categories of people who are not Commonwealth officers, such as specific industries or professions. For example, 3 offences specifically apply to legal practitioners⁸ and 4 offences specifically apply to health care and aged care professionals.⁹

Secrecy offences in context: other regimes for protecting, accessing and disclosing information

Secrecy provisions are an information protection mechanism that sit within the context of a range of other regimes that regulate protection, disclosure and access arrangements for Commonwealth information (for a definition of Commonwealth information, see p. 10).

There can be a range of reasons why information, including sensitive information, is provided to government by individuals, entities and other governments and in providing this information, there is an expectation that it will only be used for the purposes for which it was provided or required.

⁸ Section 123(5A) *Anti-Money Laundering and Counter-Terrorism Financing Act 2006*; section 105.41(2) *Criminal Code Act 1995*; section 67(1) *Public Interest Disclosure Act 2013*.

⁹ Section 62-1 *Aged Care Act 1997*; section 135AAA(1), (3), (5) *National Health Act 1953*.

Other regimes that regulate the protection of information include:

- **Privacy Act 1988:** The Privacy Act promotes and protects the privacy of individuals, and regulates the handling of personal information by Australian Government agencies, private sector organisations with an annual turnover of more than \$3 million, and some smaller organisations. A number of specific secrecy offences, including non-disclosure duties, were enacted prior to the commencement of the Privacy Act, and provided protection for personal information held by the Commonwealth.
- **Duties of confidentiality:** The equitable duty of confidence and the common law duties of loyalty and fidelity govern the protection and disclosure of information, including information held by government. An action for breach of confidence may be brought to restrain disclosure of information by a third party who has received confidential information.¹⁰ The common law imposes a duty of loyalty and fidelity upon all employees.¹¹
- **Protective Security Policy Framework (PSPF):** The PSPF sets out requirements and principles to assist government entities to appropriately manage information. The PSPF requires Commonwealth entities to have in place measures to control access to sensitive information and reduce the risk of unauthorised disclosure.¹²

Consistent with principles of open and accountable government, there are also a number of Commonwealth schemes that enable public access to, or disclosure of, information, while also ensuring proper handling of sensitive information. To assist with the effective operation of these mechanisms, accommodation may be made in the operation of secrecy offences.

Key Commonwealth access and disclosure regimes include:

- **Freedom of Information Act 1982:** the FOI Act provides a framework for access to information that supports the accountability of government for its actions. Section 38 of the FOI Act contains an exemption from disclosure of information that is subject to certain secrecy provisions contained in Schedule 3 of the FOI Act.
- **Archives Act 1983:** the Archives Act establishes the National Archives and provides public access to Commonwealth records that are in the open access period (generally documents 20 years and older). However, the Archives Act recognises that certain categories of government information should not be disclosed. Exempt records under the Archives Act include information that could reasonably be expected to cause damage to the security or international relations of the Commonwealth or other public interests including unreasonable disclosure of personal or commercial information, or that could endanger life.¹³
- **Public Interest Disclosure Act 2013:** the PID Act enables public officials to disclose suspected wrongdoing by another public official or by an Australian government agency.¹⁴ The PID Act provides disclosers with immunity against civil, criminal and administrative liability for their disclosure (including potential liability for the contravention of secrecy offences), with certain limitations including for disclosures of intelligence information and information

¹⁰ *Commonwealth v Fairfax* (1980) 147 CLR 39, 50.

¹¹ *Faccenda Chicken Ltd v Fowler* [1986] 1 All ER 617.

¹² [Protective Security Policy Framework: 9 Access to information.](#)

¹³ Section 33 of the *Archives Act 1983*.

¹⁴ The Government has introduced the first tranche of reforms to improve the PID Act to align with the commencement of the National Anti-Corruption Commission in mid-2023.

relating to intelligence agencies.¹⁵ Other information is subject to designated publication restrictions.¹⁶ The PID Act also provides that the conduct of a public interest disclosure investigation is not affected by the operation of secrecy obligations, with limited exceptions.¹⁷

- **Data Availability and Transparency Act 2022:** the DAT Act establishes the DATA Scheme which allows Australian Government bodies participating in the Scheme¹⁸ to share their public sector data with Accredited Users (who are authorised to collect and use the data provided the requirements of the DAT Act are met). The DAT Act authorises collection and use of data provided it is in line with the Privacy Act and overrides some secrecy offences that would otherwise prevent sharing of data under the DATA scheme.¹⁹

In addition to these regimes there are other schemes that may also regulate protection, disclosure, and access arrangements for Commonwealth information. These include arrangements under legislative regimes that may have particular requirements such as the requirements outlined in the *My Health Records Act 2012* regarding the collection, use and disclosure of a healthcare recipient's My Health Record. Criminal and civil penalties can apply if a person collects, uses or discloses information from a My Health Record without authorisation.

Other regimes that may regulate the disclosure or use of, or access to, information and documents, include parliamentary privilege, which prohibits certain uses of material that forms part of the proceedings in Parliament, professional obligations such as legal professional privilege, and public interest immunity. For example, public interest immunity may operate to prevent disclosure, to a parliamentary committee or a court, of documents or information that would, or might reasonably be expected to, damage Australia's national security, defence or international relations; damage relations between the Commonwealth and the States; disclose the deliberations of the Cabinet; prejudice the investigation of a possible breach of the law or the enforcement of the law; disclose a confidential source of information; or endanger the life or physical safety of a person.²⁰

Secrecy override provisions

Some Commonwealth Acts include provisions that operate to disapply ('override') secrecy provisions in other legislation. For example, section 205 of the *National Anti-Corruption Commission Act 2022* enables information to be referred to the Commission despite any secrecy provision that would usually prohibit the information's disclosure, with some exceptions.²¹ The department has identified **21 override provisions** in 18 Commonwealth laws. These most commonly facilitate provision of

¹⁵ PID Act, section 33.

¹⁶ The PID Act imposes designated publication restrictions on certain information in a range of legislation, including the *Family Law Act 1975* and the *Migration Act 1958*.

¹⁷ PID Act, section 75.

¹⁸ Some Commonwealth entities are excluded from the scheme for national security and other reasons and are referred to as excluded entities under section 11(3) of the DAT Act. This includes the Commonwealth Ombudsman, the ANAO, the Inspector-General of Intelligence and Security and NIC agencies.

¹⁹ DAT Act, section 23. The secrecy override provision in the DAT Act is subject to some exceptions in circumstances where secrecy provisions protect highly sensitive data collected by the Commonwealth.

²⁰ For example, see paragraph 4.6.1 of the Government Guidelines for Official Witnesses before Parliamentary Committees and Related Matters (last issued in February 2015)

²¹ Some secrecy offences are 'exempt secrecy provisions' under the Act, which means that the original secrecy offence will continue to apply despite the override, and the Commissioner will not be permitted to access the information.

information to integrity and investigative agencies to support their functions. A list of the secrecy override provisions are set out in table 4 of **Attachment B**.

Suitability, appropriate framing of, and requirement for, secrecy offences

The department will be providing advice to Government on the principles that should govern the framing of general and specific secrecy offences in Commonwealth legislation, including the categories of persons and information to which it is appropriate to apply for each of these types of offences. The terms of reference note the Review will have particular regard to:

- the principles outlined in the ALRC Report; and
- other relevant principles, including but not limited to those set out in the [Guide to Framing Commonwealth Offences, Infringement Notices and Enforcement Powers](#).

The department will also have regard to recent reports and inquiries²² and views on the operation of secrecy offences, including the new general secrecy offences in Part 5.6 of the Code.

The department welcomes views on:

- the circumstances in which secrecy offences are warranted (for example, where criminal penalties are necessary and proportionate to protect essential public interests)
- enacting specific secrecy offences when general secrecy offences do not provide adequate protection
- clearly identifying the conduct and the individuals that are covered by a secrecy offence
- physical elements for secrecy offences
- fault elements for secrecy offences (for example, is it appropriate to apply the fault element of intention to physical conduct, and recklessness to the harm arising from the disclosure)
- approach to subsequent (third party) disclosure offences
- defences for secrecy offences, and
- penalties, noting maximum penalties should reflect the seriousness of the potential harm caused and the fault elements that attach to the elements of the offence.

The department will also be providing advice to Government on what, if any, offences in Commonwealth legislation are no longer required, including in light of the introduction of the general secrecy offences in the Criminal Code or because there are other appropriate mechanisms to manage the protection of information, or where civil or administrative action may be more appropriate.

The department is working with other Commonwealth departments and agencies to review all non-disclosure duties that attract criminal liability through the application of section 122.4 of the Criminal Code. This involves assessing whether it is necessary and proportionate to the protection of an essential public interest for the non-disclosure duty to continue to attract criminal liability.²³ These non-disclosure duties are set out in table 3 of **Attachment B**.

Section 122.4 of the Code, which relates to unauthorised disclosure of information by current or former Commonwealth officers, sunsets on 29 December 2023. As noted earlier, the purpose of the sunset clause was to preserve the operation of non-disclosure duties until each duty could be reviewed to determine whether it should be converted into a specific secrecy offence or whether criminal liability is no longer required.

²² Further information on recent inquiries and reports is at Attachment C.

²³ This refers to an assessment of whether criminal liability is necessary and proportionate to the harm caused by the disclosure of the information.

In determining whether information should be protected by secrecy provisions, the Government must balance different interests. Examples of these interests include:

- avoiding harm caused by inappropriate disclosure of information
- securing public trust that the Government will deal appropriately with information, and
- protecting Australia's open and democratic society.

The ALRC Report recommended that specific secrecy offences applying criminal liability (rather than provisions providing for civil or administrative action) should only exist where criminal liability is necessary and proportionate to the harm caused by the disclosure.²⁴ Other mechanisms to protect information can include frameworks such as the Privacy Act or other sanctions such as civil penalties, administrative or disciplinary action.

The department welcomes submissions on the issues outlined above, including views on the essential public interests that mean criminal liability should attach to unauthorised disclosure of Commonwealth information.

Consultation question 1

What principles should govern the framing of general secrecy offences and specific secrecy offences, including the categories of persons and information to which it is appropriate for each of these types of offences to apply?

Consultation question 2

Having regard to these principles, are there any general or specific secrecy offences that should be amended or repealed?

- a) For any of these offences, are there other forms of action (such as civil or administrative action) that would be more appropriate to protect against unlawful communication or other dealing with the information?

Consultation question 3

Are there circumstances in which it is appropriate for a specific secrecy offence to prohibit conduct that is also prohibited by a general secrecy offence?

Consultation question 4

Are the current defences for general secrecy offences available under section 122.5 of the Criminal Code appropriately framed? Are there any amendments or additions to these defences that should be considered?

Consultation question 5

Are there any defences that should generally be available for specific secrecy offences? Are there amendments or additions to defences for specific secrecy offences that should be considered?

²⁴ Recommendation 9-1 of the ALRC Report.

Part 2: Public interest journalism

Public interest journalism plays a critical role in holding governments to account in an open and democratic society. The need for protections for public interest journalism in secrecy law must be balanced against other essential public interests, such as national security and public safety.

Existing protections for public interest journalism in secrecy law

The general secrecy offences in Part 5.6 of the Criminal Code include a defence under section 122.5(6) for public interest journalism.

Section 122.5(6) provides that it is a defence to a prosecution for an offence against Part 5.6 of the Criminal Code if the person communicated, removed, held or otherwise dealt with relevant information:

- in their capacity as a person engaged in the business of reporting news, presenting current affairs or expressing editorial or other content in news media, and
- at the time, the person reasonably believed that engaging in that conduct was in the public interest.

Section 122.5(6) also extends to administrative staff of an entity engaged in reporting news, presenting current affairs or expressing editorial or other content, and who are acting under the direction of a journalist, editor or lawyer who is also a member of the staff of the entity.

The concept of 'public interest' is not specifically defined in the Criminal Code. However, the Code does provide specific examples where dealing with or holding certain information will *not* be in the public interest, namely:

- the information protects the identity of Australian Security Intelligence Organisation (ASIO) and Australian Secret Intelligence Service (ASIS) employees
- the information relates to the identity of a person involved in witness protection, or
- where the conduct is engaged in for the purpose of directly or indirectly assisting a foreign intelligence agency, or a foreign military organisation.

Evidential burden

Where an individual seeks to rely on this defence, the individual bears the evidential burden.²⁵ This would require a journalist to present evidence showing that they reasonably believed that engaging in the conduct was in the public interest. The defendant is not required to prove that their conduct was actually in the public interest. Once the defendant's evidential burden is discharged, the prosecution must disprove beyond reasonable doubt that the person did not hold or deal with the information in the public interest.

Access to the public interest journalism defence

The public interest journalism defence in Part 5.6 of the Criminal Code is the only public interest journalism defence in Commonwealth legislation. There are no equivalent defences in relation to specific secrecy offences.

One area of particular interest has been protections for public interest journalism in relation to national security. A range of recommendations arising from the PJCIS 2020 press freedoms report are

²⁵ Section 13.3 of the Criminal Code.

being considered separately to this Review (including journalist information warrants and consultation mechanisms between journalists and national intelligences community agencies).²⁶

Recognising that unauthorised communication or other dealings with national security information could be expected to cause serious or grave damage to Australia's national interest, there are a range of specific secrecy offences in Commonwealth legislation that apply to unauthorised dealings with national security information in addition to the operation of the general secrecy offences in the Criminal Code. For example, this could include circumstances where information reveals sensitive defence operations and plans, certain capabilities, methodologies and sources, the identity and whereabouts of personnel in sensitive positions, and immediate threats to life, including the lives of Australian personnel. This interest needs to be considered alongside appropriate oversight and accountability mechanisms in the area of national security including for wrongdoing, corruption or maladministration. The department notes the role of oversight mechanisms such as the Inspector-General of Intelligence and Security and the National Anti-Corruption Commission.

The 2019 Richardson Review, which considered the legal framework of the National Intelligence Community, found that current mechanisms for public interest disclosures of information obtained by, or relating to, National Intelligence Community agencies (NIC agencies) remained appropriate. Further, it recommended that neither general nor specific secrecy offences applying to NIC agencies should be amended.²⁷

Requirement for consent to prosecute certain secrecy offences

In all potential Commonwealth prosecutions, the Commonwealth Director of Public Prosecutions (CDPP) will first determine whether a prosecution should proceed on the basis of evidence collected and referred by relevant law enforcement agencies. The CDPP must be satisfied that there is sufficient evidence to prosecute the case, and that the prosecution would be in the public interest.²⁸

The Attorney-General's written consent is also required for any prosecution—regardless of whether the defendant is a journalist—under the general secrecy offences in Part 5.6 of the Criminal Code and under certain specific secrecy offences.²⁹ The Attorney-General's consent is commonly required to commence proceedings that could affect Australia's international relations or national security. This legislative requirement is an additional layer of scrutiny.³⁰

In considering whether to give consent to a prosecution, the Attorney-General has discretion to consider any relevant information, including detailed briefs of evidence, advice from the CDPP, any applicable defences and exceptions, and contextual information including the public interests served by a journalist's conduct.

Additionally, the Attorney-General has issued a direction under the *Director of Public Prosecutions Act 1983* that requires the CDPP to obtain the Attorney-General's written consent before proceeding with the prosecution of a journalist under certain circumstances. This requirement applies to prosecutions where the defendant is a journalist, the alleged offence relates to work in a professional

²⁶ PJICIS *Inquiry into the impact of the exercise of law enforcement and intelligence powers on the freedom of the press* (2010).

²⁷ Recommendation 144, [Comprehensive Review of the Legal Framework of the National Intelligence Community](#) (2019).

²⁸ See CDPP [Prosecution Policy](#).

²⁹ Sections 18, 18A, 18B and 92 of the ASIO Act, Part 6, Division 1 of the *Intelligence Services Act 2001* and Sections 42 and 44 of the *Office of National Intelligence Act 2018*.

capacity as a journalist, and the offence is against certain provisions in Commonwealth legislation, including section 35P of the *Australian Security Intelligence Organisation Act 1979* (ASIO Act).³¹

Are any amendments to secrecy provisions required to adequately protect public interest journalism balanced against other essential public interests?

The department invites submissions on whether any amendments to secrecy provisions are required to adequately protect public interest journalism, balanced against other essential public interests.

Consultation question 6

What principles should determine how the public interest journalism defence to the general secrecy offences in Part 5.6 of the Criminal Code is framed?

Consultation question 7

Having regard to those principles, is the current public interest journalism defence in Part 5.6 of the Criminal Code appropriately framed? If not, what amendments should be considered?

Consultation question 8

Should the public interest journalism defence to the general secrecy offences in Part 5.6 of the Criminal Code identify factors that may be considered for the purposes of determining whether the communication or other dealing with the information may be in the public interest?

Consultation question 9

Should a public interest journalism defence modelled on subsection 122.5(6) of the Criminal Code be considered for specific secrecy offences, and for which offences would it be an appropriate defence?

Consultation question 10

Should the requirement for the Attorney-General's consent to prosecute a journalist for certain offences, which is currently imposed by a ministerial direction, be maintained? If so, should this requirement be legislated?

³¹ Section 35P of the ASIO Act relates to the unauthorised disclosure of information relating to a special intelligence operation. The Attorney-General's consent is also required where the alleged offence is under sections 3ZZHA, 15HK, 15HL and 70 of the Crimes Act, sections 131.1 and 132.1 of the Criminal Code and section 73A of the Defence Act.



Review of Secrecy Provisions

Terms of Reference

Attachment A

Context

A March 2021 survey of Commonwealth secrecy legislation conducted by the Attorney-General's Department found there are 11 general secrecy offences and 487 specific secrecy offences in Commonwealth legislation. Separately, over 200 non-disclosure duties function as specific secrecy offences because a breach of these duties is criminalised by section 122.4 of the Schedule to the *Criminal Code Act 1995 (Cth)* (the Criminal Code). Section 122.4 will sunset on 29 December 2023.

Secrecy offences play a legitimate and important role in circumstances where the unauthorised disclosure of Commonwealth information may cause harm to essential public interests, such as national security and the safety of the public. However multiple reviews, including the 2010 Australian Law Reform Commission (ALRC) report *Secrecy Laws and Open Government in Australia*, have raised concerns about the number, inconsistency, appropriateness and complexity of a range of Commonwealth secrecy offences.

In June 2018, the Parliamentary Joint Committee on Intelligence and Security (the Committee) recommended that, following the enactment of the general secrecy offences in Schedule 2 of the *National Security Legislation Amendment (Espionage and Foreign Interference) Act 2018* (the EFI Act), the Attorney-General initiate a review of secrecy offences in other Commonwealth legislation, taking into account the set of principles contained in the ALRC report, *Secrecy Laws and Open Government in Australia*.

In its unanimous and bipartisan report, the Committee noted the “array of specific secrecy offences ... that will continue to exist once the proposed new general offences” were introduced by the EFI Act, and considered it likely that “many of these existing offences will no longer be required, or will require amendment”. The Committee recommended that the review of secrecy offences commence as soon as possible. However, no review was formally commenced during the life of the 45th Parliament.

In August 2020, in its *Inquiry into the exercise of law enforcement and intelligence powers on the freedom of the press*, the Committee re-iterated its recommendation for a review of Commonwealth secrecy offences. The Committee recommended that such a review be prioritised for finalisation and report by June 2021, and that the review specifically consider whether relevant Commonwealth legislation adequately protects public interest journalism.

On 15 February 2021, the then-Assistant Minister to the Attorney-General, Senator the Hon Amanda Stoker, approved terms of reference for the Attorney-General's Department to conduct a limited review of Commonwealth secrecy offences with a specific focus on public interest journalism. However, that review was not completed.

On 28 July 2022, the Attorney-General asked the Independent National Security Legislation Monitor (the INSLM) to complete a review into the operation and effectiveness of the *National Security Information (Criminal and Civil Proceedings) Act 2004* (the NSI Act).

Separately, the INSLM has also commenced a review of the EFI Act, including the general secrecy offences introduced by that Act. However, the INSLM is not expected to report until 2024.

On 11 August 2022, the Interim Report of the Royal Commission into Defence and Veteran Suicide recommended (among other things):

For serving and ex-serving ADF members whose lived experience is intrinsically linked to security classified or operationally sensitive information, the defence available under the Criminal Code section 122.5(5) should be extended to cover information communicated to a Royal Commission. A defence to other secrecy offences will also be needed.

Scope of the Review

Having regard to the context set out above, the Attorney-General's Department will conduct an inquiry and report on:

- any specific secrecy offences in Commonwealth legislation that are no longer required in light of the introduction of the general secrecy offences in the EFI Act;
- the suitability and appropriate framing of the general and specific secrecy offences in Commonwealth legislation, having particular regard to:
 - the principles outlined in the ALRC's report *Secrecy Laws and Open Government in Australia*; and
 - other relevant principles, including but not limited to those set out in the *Guide to Framing Commonwealth Offences, Infringement Notices and Enforcement Powers*;
- any amendments to general and specific secrecy offences in Commonwealth legislation that are necessary to adequately protect individuals who provide information to Royal Commissions (balanced against other essential public interests); and
- any amendments that are necessary to adequately protect public interest journalism (balanced against other essential public interests).

The Department's inquiry and report should not include recommendations for amendments to the secrecy offences in the NSI Act, noting that the INSLM is likely to complete a review of those provisions in 2023.

The Department's report should identify and have regard to existing reports and inquiries, including but not limited to the INSLM's report on the impact on journalists of section 35P of the Australian Security Intelligence Organisation Act 1979.

For the purposes of this document, a reference to "specific secrecy offences" includes a reference to the 200 non-disclosure duties that function as specific secrecy offences because a breach of these duties is criminalised by section 122.4 of the Schedule to the Criminal Code.

Timeframe

The Department will work towards providing government with:

- an interim report on any amendments to general and specific secrecy provisions that are necessary to adequately protect individuals who provide information to Royal Commissions by 31 January 2023; and
- a final report by 30 June 2023.

Consultation

The Department should consult widely with Commonwealth departments and agencies, civil society (including media organisations and legal experts) and, for the purposes of the interim report, current royal commissions including the Royal Commission into Defence and Veteran Suicide.



Attachment B

Secrecy Provisions in Commonwealth laws

As at January 2023, the landscape of Commonwealth secrecy provisions³² comprises:

- 11 general secrecy offences in Part 5.6 of the Criminal Code
- 542 specific secrecy offences in 178 Commonwealth laws (see table 2 below, pages 2-10)
- 296 non-disclosure duties in 107 Commonwealth laws which attract criminal liability for unauthorised disclosure of information by current or former Commonwealth officers under section 122.4 of the Criminal Code (see table 3 below, pages 11-16)
- 21 override provisions in 18 Commonwealth laws that operate to exclude secrecy provisions in other Commonwealth laws (see table 4 below, pages 16-17).

General secrecy offences

Part 5.6 of the Criminal Code contains 11 general secrecy offences that protect against harm to essential public interests caused by the unauthorised disclosure of inherently harmful information, which includes sensitive government information or protected information. These criminal offences apply generally to people working in or who receive information from the Commonwealth and require a general standard of conduct from these groups of people.

Table 1 - General secrecy offences	
Legislation	Provision
<i>Criminal Code Act 1995 – Part 5.6</i>	ss 122.1(1), (2), (3), (4); 122.2(1), (2), (3), (4); 122.3(1); 122.4A(1), (2)

Specific secrecy offences

Specific secrecy offences in Commonwealth laws apply to particular types of information and to particular agencies or individuals. Often specific secrecy offences are created in legislation establishing an agency or a regulatory scheme, in order to govern the handling and protection of information within that agency or scheme. Specific secrecy offences apply in addition to the general secrecy offences and permit secrecy obligations to be adjusted for the particular information, agencies or individuals. For example, specific secrecy offences that protect personal, commercial, national security or law enforcement information ensure that agencies appropriately deal with these sensitive types of information to protect personal privacy, commercial interests, national security and integrity of law enforcement.

³² A March 2021 survey of Commonwealth laws found 11 general secrecy offences and 487 specific secrecy offences in Commonwealth legislation; and over 200 non-disclosure duties. Additional provisions have been identified from provisions enacted since March 2021, and further review in consultation with departments.

Table 2 - Specific secrecy offences

Legislation	Provision
<i>A New Tax System (Australian Business Number) Act 1999</i>	s 30
<i>A New Tax System (Family Assistance) (Administration) Act 1999</i>	ss 163; 164; 165; 166
<i>Aboriginal and Torres Strait Islander Act 2005</i>	ss 193S; 200A
<i>Aboriginal Land Rights (Northern Territory) Act 1976</i>	ss 23E; 54AA
<i>Administrative Appeals Tribunal Act 1975</i>	s 39A (10)
<i>Age Discrimination Act 2004</i>	s 60
<i>Aged Care Act 1997</i>	ss 86-2(1); 86-5; 86-6; 86-7
<i>Aged Care Quality and Safety Commission Act 2018</i>	ss 60(1); 62
<i>Agricultural and Veterinary Chemicals Code Act 1994</i>	ss 162(1); 163
<i>Agricultural and Veterinary Chemicals Code Regulations 1995</i>	s 69(3)
<i>Anti-Money Laundering and Counter-Terrorism Financing Act 2006</i>	ss 121(1), (5), (6); 123(1), (2), (5C), (7AA), (7AC), (7B), (8A); 126; 128; 129; 207; 35H(1); 35J; 35K(1); 50A(1)
<i>Auditor-General Act 1997</i>	ss 36; 48
<i>AusCheck Act 2007</i>	s 15(1), (1A)
<i>Australian Border Force Act 2015</i>	s 42
<i>Australian Charities and Not-for-profits Commission Act 2012</i>	ss 150-25; 150-55
<i>Australian Citizenship Act 2007</i>	ss 42; 43
<i>Australian Crime Commission Act 2002</i>	ss 21C(1); 25A(9); 29B; 51; 59AB; 36Q
<i>Australian Federal Police Act 1979</i>	ss 40ZA; 60A
<i>Australian Hearing Services Act 1991</i>	s 67(8)
<i>Australian Human Rights Commission Act 1986</i>	s 49
<i>Australian Immunisation Register Act 2015</i>	s 23

Table 2 - Specific secrecy offences

Legislation	Provision
<i>Australian Information Commissioner Act 2010</i>	s 29
<i>Australian Institute of Health and Welfare Act 1987</i>	s 29(1), (3)
<i>Australian Jobs Act 2013</i>	s 102
<i>Australian Postal Corporation Act 1989</i>	ss 90H; 90LB; 90LE
<i>Australian Prudential Regulation Authority Act 1998</i>	s 56
<i>Australian Securities and Investments Commission Act 2001</i>	s 127(4E), (4EA), (4EB), (4F)
<i>Australian Security Intelligence Organisation Act 1979</i>	ss 18(2); 18A; 18B; 34GE(4); 34GF; 35P(1), (1B), (2), (2A); 81; 92(1), (1A)
<i>Australian Small Business and Family Enterprise Ombudsman Act 2015</i>	ss 52; 82; 86; 91
<i>Australian Trade and Investment Commission Act 1985</i>	s 94
<i>Aviation Transport Security Act 2004</i>	s 74
<i>Aviation Transport Security Regulations 2005</i>	regs 2.06; 4.41ZH; 4.46H; 4.51H; 4.51J; 6.34A(2); 6.37AB(2); 6.34(3); 6.37AA(3)
<i>Banking Act 1959</i>	s 11CI
<i>Bankruptcy Act 1966</i>	sch 2, s 50-35
<i>Biosecurity Act 2015</i>	s 585
<i>Broadcasting Services (Transitional Provisions and Consequential Amendments) Act 1992</i>	s 25
<i>Building and Construction Industry (Improving Productivity) Act 2016</i>	ss 106; 107
<i>Building Energy Efficiency Disclosure Act 2010</i>	ss 19; 70
<i>Business Names Registration Act 2011</i>	ss 77; 62L(4)
<i>Business Services Wage Assessment Tool Payment Scheme Act 2015</i>	ss 76; 77; 78; 79
<i>Carbon Credits (Carbon Farming Initiative) Act 2011</i>	ss 270; 276(4); 277; 282; 283
<i>Census and Statistics Act 1905</i>	s 19
<i>Chemical Weapons (Prohibition) Act 1994</i>	s 102(2), (3A), (3C)

Table 2 - Specific secrecy offences

Legislation	Provision
<i>Child Care Act 1972</i>	ss 12K; 12L; 12Q; 12S(1), (2)
<i>Child Support (Assessment) Act 1989</i>	ss 150; 150AA
<i>Child Support (Registration and Collection) Act 1988</i>	ss 16; 16AA; 58
<i>Civil Aviation Act 1988</i>	s 32AP
<i>Civil Aviation Safety Regulations 1998</i>	reg 117.030
<i>Clean Energy Regulator Act 2011</i>	ss 43; 49(4), (6); 50(4); 55(4)
<i>Coal Mining Industry (Long Service Leave) Payroll Levy Collection Act 1992</i>	s 14(3)
<i>Commonwealth Electoral Act 1918</i>	ss 189B(1), (2), (3); 91A(1); 91B(2), (3); 323
<i>Commonwealth Functions (Statutes Review) Act 1981</i>	s 234
<i>Commonwealth Registers Act 2020</i>	s 17
<i>Competition and Consumer Act 2010</i>	pt X, s 10.89(4); ss 95ZP; 95ZQ
<i>Comprehensive Nuclear-Test-Ban Treaty Act 1998</i>	s 74
<i>Copyright Act 1968</i>	s 203E
<i>Corporations (Aboriginal and Torres Strait Islander) Act 2006</i>	ss 175-10; 183-1; 265-25(4); 472-1; 604-15; 604-20; 604-25(8)
<i>Corporations Act 2001</i>	ss 177; 1270K(4); 1270L(1); 1317AAE(1)
<i>Counter-Terrorism (Temporary Exclusion Orders) Act 2019</i>	s 24
<i>Crimes (Taxation Offences) Act 1980</i>	s 4
<i>Crimes Act 1914</i>	ss 3ZQJ; 3ZQT; 3ZZHA; 3ZZVH; 15HK(1), (1B), (1D), (1E); 15JQ(1); 15JR(1); 15LC(1), (2), (3); 15MS(1), (2), (3); 23XG(2); 23XH; 23YO(1);
<i>Criminal Code Act 1995</i>	ss 91.1(1), (2); 91.2(1); 91.3; 91.6; 91.8(1), (2), (3); 105.41(1), (2), (3), (4A), (5), (6), (7)
<i>Customs Act 1901</i>	ss 64ADA; 233BABAF

Table 2 - Specific secrecy offences

Legislation	Provision
<i>Dairy Produce Act 1986</i>	s 119; sch 2, s 43
<i>Data-Matching Program (Assistance and Tax) Act 1990</i>	s 15
<i>Defence (Inquiry) Regulations 2018</i>	ss 36(1); 37(1); 66(1)
<i>Defence (Special Undertakings) Act 1952</i>	ss 31(1)(b); 9(2)(a)(ii)
<i>Defence Act 1903</i>	ss 110XD(2); 73A(1), (2); 90
<i>Defence Force Discipline Act 1982</i>	ss 16; 16B; 58
<i>Defence Regulation 2016</i>	s 37(1)
<i>Dental Benefits Act 2008</i>	ss 34(1); 43; 44; 45; 46
<i>Designs Act 2003</i>	s 109
<i>Disability Discrimination Act 1992</i>	s 127
<i>Disability Services Act 1986</i>	s 28
<i>Environment Protection (Alligator Rivers Region) Act 1978</i>	s 31
<i>Environment Protection and Biodiversity Conservation Act 1999</i>	sch 1, cls 51, 53
<i>Epidemiological Studies (Confidentiality) Act 1981</i>	ss 4; 6
<i>Export Control Act 2020</i>	s 397
<i>Export Finance and Insurance Corporation Act 1991</i>	s 87(5)
<i>Family Assistance Legislation Amendment (Child Care Management System and Other Measures) Act 2007</i>	s 99
<i>Family Law Act 1975</i>	ss 121(1), (2); 67P
<i>Financial Regulator Assessment Authority Act 2021</i>	s 40
<i>Financial Transaction Reports Act 1988</i>	s 16(5A), (5AA)
<i>Fisheries Management Act 1991</i>	s 155; sch 1A, cl 53
<i>Food Standards Australia New Zealand Act 1991</i>	s 114(8)

Table 2 - Specific secrecy offences

Legislation	Provision
<i>Foreign Acquisitions and Takeovers Act 1975</i>	s 128
<i>Gene Technology Act 2000</i>	ss 187(1), (2); 53(4)
<i>Greenhouse and Energy Minimum Standards Act 2012</i>	s 169
<i>Hazardous Waste (Regulation of Exports and Imports) Act 1989</i>	ss 41W; 41V
<i>Health Insurance Act 1973</i>	ss 106ZR; 124Y(1); 130(1), (8), (9)
<i>Healthcare Identifiers Act 2010</i>	s 26(1), (2)
<i>Higher Education Funding Act 1988</i>	s 78(4)
<i>Higher Education Support Act 2003</i>	ss 179-10; 179-35; 180-25(5), (6); sch 1A, cls 73, 78
<i>Industrial Chemicals Act 2019</i>	ss 115; 117
<i>Industrial Chemicals Environmental Management (Register) Act 2021</i>	ss 50; 52
<i>Inspector General of Intelligence and Security Act 1986</i>	s 34(1), (1AA), (1AB)
<i>Inspector of Transport Security Act 2006</i>	ss 63(4), (5); 35(7); 36(7); 37(8); 49(2); 56; 60(5); 67; 75(2); 77(9)
<i>Inspector-General of Live Animal Exports Act 2019</i>	s 31
<i>Inspector-General of Taxation Act 2003</i>	s 37
<i>Insurance Act 1973</i>	s 109A
<i>Intelligence Services Act 2001</i>	ss 39A; 40; 40B; 40E; 40F; 40G; 40H; 40L; 40M; 39; 40C; 40D; 41; sch 1, cl 9
<i>Interactive Gambling Act 2001</i>	s 61NB
<i>International Criminal Court Act 2002</i>	s 92
<i>International War Crimes Tribunals Act 1995</i>	s 40AL
<i>Life Insurance Act 1995</i>	s 216A
<i>Maritime Transport and Offshore Facilities Security Act 2003</i>	s 40
<i>Maritime Transport and Offshore Facilities Security Regulations 2003</i>	regs 6.08JB(2); 6.08JA(3)

Table 2 - Specific secrecy offences

Legislation	Provision
<i>Medical Indemnity Act 2002</i>	s 77(2), (5)
<i>Midwife Professional Indemnity (Commonwealth Contribution) Scheme Act 2010</i>	s 88(2)
<i>Migration Act 1958</i>	ss 336C; 336E; s 488(1), (4); s 261AKD
<i>Mutual Assistance in Criminal Matters Act 1987</i>	ss 34V; 43C; 43B
<i>My Health Records Act 2012</i>	ss 71A(1); 59; 60(1)
<i>Narcotic Drugs Act 1967</i>	s 14MA(1)
<i>National Anti-Corruption Commission Act 2022</i>	ss 98(1); 101(1); 228; 233; 234
<i>National Blood Authority Act 2003</i>	s 11(1)
<i>National Cancer Screening Register Act 2016</i>	s 18
<i>National Consumer Credit Protection Act 2009</i>	ss 212L(4); 212M(1)
<i>National Disability Insurance Scheme Act 2013</i>	ss 62; 63; 64; 67B; 67C; 67D
<i>National Environment Protection Measures (Implementation) Act 1998</i>	s 36
<i>National Greenhouse and Energy Reporting Act 2007</i>	s 23
<i>National Health Act 1953</i>	ss 135A(1), (4), (8), (9), (14), (16), (18); 135AAA(1), (3), (5), (6), (8)
<i>National Health and Medical Research Council Act 1992</i>	s 80(2), (7), (8), (11)
<i>National Health Reform Act 2011</i>	ss 213(1); 215(2); 268(1); 269(1); 54A; 54C(2); 215A(2)
<i>National Health Security Act 2007</i>	ss 21; 90(1)
<i>National Measurement Act 1960</i>	s 19H
<i>National Redress Scheme for Institutional Child Sexual Abuse Act 2018</i>	ss 99; 100; 101; 104
<i>National Residue Survey Administration Act 1992</i>	s 11(5)
<i>National Security Information (Criminal and Civil</i>	ss 46G; 46H(1), (3), (4), (5); 40(1) (1A) (2); 41; 42; 43; 46; 46A; 46B; 46C; 46D; 46FA

Table 2 - Specific secrecy offences

Legislation	Provision
<i>Proceedings) Act 2004</i> ³³	
<i>National Sports Tribunal Act 2019</i>	ss 72; 27
<i>National Sports Tribunal Rule 2020</i>	s 15
<i>National Vocational Education and Training Regulator Act 2011</i>	s 204
<i>Native Title Act 1993</i>	s 94L
<i>Nuclear Non-Proliferation (Safeguards) Act 1987</i>	s 71
<i>Office of National Intelligence Act 2018</i>	ss 42; 44(1), (2)
<i>Offshore Minerals Act 1994</i>	ss 374; 758
<i>Offshore Petroleum and Greenhouse Gas Storage Act 2006</i>	s 758(1), (3)
<i>Ombudsman Act 1976</i>	s 35(2), (5)
<i>Paid Parental Leave Act 2010</i>	ss 129; 130; 131; 132
<i>Parliamentary Commission of Inquiry (Repeal) Act 1986</i>	s 7
<i>Parliamentary Privileges Act 1987</i>	s 13
<i>Patents Act 1990</i>	s 152; 173(2); 184
<i>Payment Times Reporting Act 2020</i>	s 46
<i>Petroleum and Other Fuels Reporting Act 2017</i>	s 20; 24(7); 30 (7)
<i>Pooled Development Funds Act 1992</i>	s 71
<i>Port Statistics Act 1977</i>	s 7
<i>Privacy Act 1988</i>	s 80Q

³³ Under the Review's terms of reference, the department will not be reporting on amendments to the secrecy offences in the *National Security Information (Criminal and Civil Proceedings) Act 2004*. At the request of the Attorney-General, the Independent National Security Legislation Monitor is currently undertaking a review of that Act and will report to Government by 31 October 2023.

Table 2 - Specific secrecy offences

Legislation	Provision
<i>Private Health Insurance Act 2007</i>	ss 282-25; 323-1; 323-40; 323-45; 323-50; 323-55
<i>Proceeds of Crime Act 1987</i>	ss 74; 210(1), (2); 217; 223(1), (2), (3); sch 1, cls 9(1), (2), 16
<i>Productivity Commission Act 1998</i>	s 53
<i>Public Interest Disclosure Act 2013</i>	ss 20(1), (2); 65; 67
<i>Racial Discrimination Act 1975</i>	s 27F
<i>Recycling and Waste Reduction Act 2020</i>	s 148
<i>Referendum (Machinery Provisions) Act 1984</i>	ss 62B(1), (2), (3); 116
<i>Resale Royalty Right for Visual Artists Act 2009</i>	s 48
<i>Research Involving Human Embryos Act 2002</i>	ss 30(1), (2); 28R(6), (6A), (6B), (8); 29A(7)
<i>Reserve Bank Act 1959</i>	ss 79B(1); 79A
<i>Royal Commissions Act 1902</i>	s 60H
<i>Security of Critical Infrastructure Act 2018</i>	s 45
<i>Sex Discrimination Act 1984</i>	ss 112; 92
<i>Social Security (Administration) Act 1999</i>	ss 203; 204; 205; 206
<i>Space (Launches and Returns) Act 2018</i>	s 96
<i>Sport Integrity Australia Act 2020</i>	s 67(1)
<i>Student Assistance Act 1973</i>	s 122U; 352; 353; 357; 358; 359
<i>Surveillance Devices Act 2004</i>	ss 45(1), (2), (7); 45B (1), (2)
<i>Tax Agent Services Act 2009</i>	ss 70-35; 70-45
<i>Taxation Administration Act 1953</i>	ss 8XA; 8WB; 14ZZW; sch 1, ss 355-155, 355-25, 355-265
<i>Telecommunications (Interception and Access) Act 1979</i>	ss 7; 63(1), (2); 108; 181A(1), (2), (4), (5); 181B(1), (2), (4), (5); 133; 182; 182A; sch 1, s 152

Table 2 - Specific secrecy offences	
Legislation	Provision
<i>Telecommunications Act 1997</i>	ss 276(3); 277(3); 278(3); 295Z; 295ZA; 296; 297; 299A(1), (2); 300; 301; 302; 302A; 317ZF
<i>Tertiary Education Quality and Standards Agency Act 2011</i>	ss 188, 197A
<i>Torres Strait Fisheries Act 1984</i>	sch 2, ss 51, 53
<i>Torres Strait Fisheries Regulations 1985</i>	reg 13
<i>Transport Safety Investigation Act 2003</i>	ss 26; 53(1), (2); 59(4), (5); 60(1), (2), (3)
<i>VET Student Loans Act 2016</i>	ss 100(1), (3); 101; 99
<i>Wheat Export Marketing (Repeal and Consequential Amendments) Act 2008</i>	sch 3, item 6
<i>Wheat Export Marketing Amendment Act 2012</i>	s 35
<i>Witness Protection Act 1994</i>	ss 22(1), (2), (3), (4); 22A(1), (2), (3), (4); 22B(1), (2)
<i>Work Health and Safety Act 2011</i>	s 271(2), (4)
<i>Workplace Gender Equality Act 2012</i>	s 32

Specific Secrecy Offences - Non-disclosure duties

A subset of specific secrecy offences are **non-disclosure duties** which are provisions included in a range of Commonwealth laws that establish a duty not to disclose or otherwise deal with certain information. These provisions do not directly impose criminal liability but rely on section 122.4 of the Criminal Code, which imposes criminal liability for the breach of a non-disclosure duty by current and former Commonwealth officers or a person otherwise engaged to perform work for a Commonwealth entity. Section 122.4 will sunset on 29 December 2023. The purpose of section 122.4 sunset was intended to preserve the operation of non-disclosure duties until such time as each duty could be reviewed to determine whether it should be converted into a stand-alone specific secrecy offence, or whether criminal liability should be removed. This is a key task of the Review.

Table 3 - Non-disclosure duties	
Legislation	Provision
<i>A New Tax System (Australian Business Number) Act 1999</i>	s 26(4)

Table 3 - Non-disclosure duties

Legislation	Provision
<i>Aboriginal and Torres Strait Islander Act 2005</i>	s 191
<i>Administrative Appeals Tribunal Act 1975</i>	ss 36(2); 36B(2); 39B(3)(a); 46(2)
<i>Aged Care Act 1997</i>	ss 62-1; 86-10(3); 86-11(4); 86-9(2)
<i>Air Navigation Regulation 2016</i>	reg 10
<i>Airports (Building Control) Regulations 1996</i>	reg 4.03
<i>Airports (Environment Protection) Regulations 1997</i>	reg 10.06
<i>Archives Act 1983</i>	s 30A
<i>Auditor-General Act 1997</i>	s 37
<i>Australian Crime Commission Act 2002</i>	ss 9(4), (6); 59(2), (5); 59AD; 60; 61(4)
<i>Australian Federal Police Regulations 2018</i>	regs 28; 29
<i>Australian Hearing Services Act 1991</i>	s 67(1), (3), (5), (6), (8C)
<i>Australian Institute of Aboriginal and Torres Strait Islander Studies Act 1989</i>	s 41(1), (2)
<i>Australian Organ and Tissue Donation and Transplantation Authority Act 2008</i>	s 58(1)
<i>Australian Securities and Investments Commission Act 2001</i>	ss 127(1), (2F); 213; 237
<i>Australian Small Business and Family Enterprise Ombudsman Act 2015</i>	ss 53(2); 56(3); 58(3); 63(3); 41(3)
<i>Aviation Transport Security Regulations 2005</i>	regs 2.79(3); 3.29(3); 4.92; 2.11(4)
<i>Banking Act 1959</i>	s 69A
<i>Biosecurity Regulation 2016</i>	ss 102; 94
<i>Business Names Registration Act 2011</i>	s 60(6); s 62M(1)
<i>Carbon Credits (Carbon Farming Initiative) Act 2011</i>	s 123D
<i>Census and Statistics Act 1905</i>	ss 19A; 12; 13(3)
<i>Census and Statistics Ordinance 1961</i>	s 26

Table 3 - Non-disclosure duties

Legislation	Provision
<i>Clean Energy Finance Corporation Act 2012</i>	s 73
<i>Commonwealth Electoral Act 1918</i>	ss 176(3); 189A(4); 90B(6), (6A), (7), (8A)
<i>Competition and Consumer (Industry Codes—Food and Grocery) Regulation 2015</i>	reg 34
<i>Competition and Consumer (Industry Codes—Franchising) Regulation 2014</i>	reg 32
<i>Competition and Consumer Act 2010</i>	ss 10.89; 152AYA; 10.88; 89(5A); 95ZN; 155AA; 155AAA; sch 2, s 132A
<i>Corporations Regulations 2001</i>	reg 7.8.18
<i>Crimes Act 1914</i>	ss 3ZZUH(4); 15HN(3), (4); 15HO(2), (5); 15JS(3); 15LD(3); 23XWO(8); 85ZS(1)(d)(i)
<i>Customs (Prohibited Exports) Regulations 1958</i>	s 13EH(2), (3)
<i>Customs Act 1901</i>	ss 112BA(3); 269U(7); 269ZI(9); 269ZJ(2); 269ZZX(2)
<i>Data Availability and Transparency Act 2022</i>	s 105
<i>Defence Force Discipline (Disciplinary Infringement Records) Rules 2022</i>	r 9
<i>Defence Service Homes Act 1918</i>	sch 1, cl 29
<i>Defence Trade Controls Act 2012</i>	s 68(1), (2)
<i>Designs Act 2003</i>	s 61
<i>Environment Protection and Biodiversity Conservation Act 1999</i>	ss 131AA(4); 133(4); 143(6); 146B(4); 170B; 189B; 251(3); 324R; 341R; 390R
<i>Export Finance and Insurance Corporation Act 1991</i>	s 87(4)
<i>Fair Work Act 2009</i>	s 714A
<i>Family Law Act 1975</i>	ss 10H(1); 10U; 10D
<i>Federal Court of Australia Act 1976</i>	ss 23CN; 23DN
<i>Financial Sector (Collection of Data) Act 2001</i>	s 13B
<i>Fisheries Administration Act 1991</i>	s 101(6)

Table 3 - Non-disclosure duties

Legislation	Provision
<i>Food Standards Australia New Zealand Act 1991</i>	s 114 (1), (6)
<i>Great Barrier Reef Marine Park Act 1975</i>	s 61AAB
<i>Health Insurance Act 1973</i>	s 92(6)
<i>Health Insurance Regulations 2018</i>	reg 86
<i>Imported Food Control Act 1992</i>	s 42A(4)
<i>Industry Research and Development Act 1986</i>	s 47
<i>Inspector of Transport Security Act 2006</i>	ss 36(6); 37(7); 52(2), (3), (4), (5), (6); 55(4), (5), (6), (7), (8); 61; 62; 63(1), (2), (3), (4); 64(2), (3), (4), (5); 67(7)(a); 68(2); 69(2); 75(8)
<i>International Arbitration Act 1974</i>	s 23C
<i>International Criminal Court Act 2002</i>	s 13(1)
<i>Judicial Misbehaviour and Incapacity (Parliamentary Commissions) Act 2012</i>	s 48(7)
<i>Life Insurance Act 1995</i>	s 231A
<i>Maritime Transport and Offshore Facilities Security Act 2003</i>	regs 3.12; 4.115; 5A.105
<i>Migration (Migration Agents Code of Conduct) Regulations 2021</i>	regs 35; 56(7)
<i>Migration Act 1958</i>	ss 33(7); 46A(5); 46B(5); 48B(4); 72(5); 91F(4); 91L(4); 91Q(5); 195A(7); 197AG(2); 198AE(5); 503A(1), (2), (4A), (5), (5A);
<i>Military Rehabilitation and Compensation Act 2004</i>	s 409(3)
<i>My Health Records Act 2012</i>	ss 70B; 59A; 71B(1)
<i>Narcotic Drugs Act 1967</i>	ss 15F(2A); 15J(4); 15N
<i>Narcotic Drugs Regulation 2016</i>	regs 28; 46
<i>National Anti-Corruption Commission Act 2022</i>	ss 158(3); 159(4); 224; 225; 230; 236(1)
<i>National Health Act 1953</i>	s 98E

Table 3 - Non-disclosure duties

Legislation	Provision
<i>National Health and Medical Research Council Act 1992</i>	s 78(1)
<i>National Health Reform Act 2011</i>	ss 220(4); 275(4); 279(2); 54H(3); 220A(3); 221(3)
<i>National Residue Survey Administration Act 1992</i>	s 11(1)
<i>National Sports Tribunal (Practice and Procedure) Determination 2021</i>	s 41
<i>National Sports Tribunal Act 2019</i>	s 41(3)(k)
<i>National Transport Commission (Model Legislation— Intelligent Access Program) Regulations 2006</i>	reg 33
<i>Native Title Act 1993</i>	ss 24BF(2); 24CF(2); 24CI(3); 24DG(2); 24DJ(3); 31(4); 44B(4A); 44F(2); 86F(2A); 98A 203BK(4)
<i>Offshore Electricity Infrastructure Act 2021</i>	ss 283; 285
<i>Offshore Petroleum and Greenhouse Gas Storage Act 2006</i>	ss 712; 713; 715; 716; 738; 739; 740A; 740B; 766; 767A; sch 3, cls 40(3), 43(3); sch 5, cl 4
<i>Ombudsman Act 1976</i>	ss 19U; 35A; 35C; 35B
<i>Parliamentary Services Act 1999</i>	ss 64V; 65AA(2); 65AB(2)
<i>Patents Act 1990</i>	ss 183; 56
<i>Patents Regulations 1991</i>	reg 3.22
<i>Petroleum and Other Fuels Reporting Act 2017</i>	s 16
<i>Plant Breeder's Rights Act 1994</i>	s 41B
<i>Primary Industries Levies and Charges Collection Act 1991</i>	s 27B(4)
<i>Privacy Regulations 2013</i>	reg 21
<i>Public Service Act 1999</i>	ss 72A; 72B; 13(6)
<i>Public Service Regulations 1999</i>	reg 2.1
<i>Research Involving Human Embryos Act 2002</i>	s 29(4)

Table 3 - Non-disclosure duties

Legislation	Provision
<i>Safety, Rehabilitation and Compensation (Defence-Related Claims) Act 1988</i>	s 151A(2)
<i>Safety, Rehabilitation and Compensation Act 1988</i>	s 121A
<i>Social Security (Administration) Act 1999</i>	s 207
<i>Student Identifiers Act 2014</i>	s 17
<i>Surveillance Devices Act 2004</i>	s 45B(11)(e)
<i>Telecommunications (Consumer Protection and Service Standards) Act 1999</i>	ss 66(3); 67(3)
<i>Telecommunications (Interception and Access) Act 1979</i>	ss 180E(1); 186(4); 186J(7); 187L(1), (1A), (2); 187P(3); 202
<i>Telecommunications Act 1997</i>	s 315H
<i>Telecommunications Regulations 2021</i>	regs 31; 27; 40; 41
<i>Therapeutic Goods Regulations 1990</i>	regs 42ZCZL(4); 42ZCZQ(5)
<i>Trade Marks Act 1995</i>	ss 258; 226A
<i>Transport Safety Investigation (Voluntary and Confidential Reporting Scheme) Regulation 2012</i>	regs 16; 20
<i>Transport Safety Investigation Act 2003</i>	s 45(7)
<i>Transport Safety Investigation Regulations 2021</i>	regs 45; 46
<i>Trans-Tasman Mutual Recognition Act 1997</i>	sch 5, s 5
<i>Veterans' Entitlements Act 1986</i>	ss 116D(6); 118ZF(7); 118ZX(2); 137(2); 140(5); 196I(2); 196ZD(2); 34(3); 35H(7); 36L(8); 37L(8); 38L(8); 45Q(8); 57E(2); 79I(5); 93ZE(2)
<i>Water Act 2007</i>	s 215
<i>Water Charge Rules 2010</i>	r 53
<i>Water Regulations 2008</i>	s 4.10
<i>Weapons of Mass Destruction Regulations 2018</i>	s 8(1)(b)
<i>Witness Protection Act 1994</i>	s 16(3)

Table 3 - Non-disclosure duties	
Legislation	Provision
<i>Work Health and Safety Regulations 2011</i>	reg 263

Override provisions

Some Commonwealth Acts include provisions that operate to disapply ('override') secrecy provisions in other legislation. The department has identified **21 override provisions** in 18 Commonwealth laws. These most commonly facilitate provision of information to integrity and investigative agencies to support their functions.

Table 4 – Override provisions	
Legislation	Provision
<i>Auditor-General Act 1997</i>	s 30
<i>Australian Crime Commission Act 2002</i>	s 19A(5)
<i>Australian Institute of Health and Welfare Act 1987</i>	s 30
<i>Child Support (Registration and Collection) Act 1988</i>	s 16AB
<i>Coastal Trading (Revitalising Australian Shipping) Act 2012</i>	s 110(4)
<i>Criminal Code Act 1995</i>	s 105A.19(4)
<i>Customs (Prohibited Exports) Regulations 1958</i>	s 13E1(5)
<i>Data Availability and Transparency Act 2022</i>	s 23
<i>Defence Trade Controls Act 2012</i>	s 69(5)
<i>Higher Education Support Act 2003</i>	s 179-25; sch 1A, cl 76
<i>Inspector-General of Intelligence and Security Act 1986</i>	s 34A (2)
<i>National Anti-Corruption Commission Act 2022</i>	ss 36, 205
<i>National Health Security Act 2007</i>	s 19(7)
<i>Ombudsman Act 1976</i>	s 9(4)

Table 4 – Override provisions

Legislation	Provision
<i>Privacy Act 1988</i>	s 44 (4)
<i>Public Interest Disclosure Act 2013</i>	s 75
<i>VET Student Loans Act 2016</i>	s 97 (2)
<i>Water Act 2007</i>	ss 128, 222E

Recent reports and inquiries

As noted in the Review's terms of reference, there has been a range of reports and inquiries that have considered and made recommendations about reforms to secrecy law. The following is a summary of recent reports relevant to the Review.

1. Australian Law Reform Commission (ALRC) – *Secrecy Laws and Open Government in Australia* (2009)

The ALRC completed its report *Secrecy Laws and Open Government in Australia* in December 2009. The report made a number of recommendations to support a more consistent approach across government for the protection of Commonwealth information, balanced against the need to maintain an open and accountable government by providing appropriate access to information.

In its report, the ALRC considered three broad areas for reform and:

- recommended the repeal of sections 70 and 79 of the *Crimes Act 1914* and the introduction of a new general secrecy offence in the Criminal Code
- recommended principles to guide the review, repeal and amendment of other specific secrecy provisions
- considered the administrative frameworks governing the handling of government information, including recommendations to improve the management of government information within those frameworks.

The *National Security Legislation Amendment (Espionage and Foreign Interference) Act 2018* implemented key recommendations of the ALRC's report, including the introduction of general secrecy offences in the Criminal Code.

2. ALRC – *Making Inquiries: A new statutory framework* (2009)

In 2009, the ALRC also completed its report *Making Inquiries: A new statutory framework*, which considered whether an alternative form or forms of Commonwealth executive inquiry to royal commissions should be established by statute. Chapter 18 of that report discussed the impact of secrecy provisions on the communication of information to Royal Commissions and Official Inquiries.

On secrecy provisions, the ALRC recommended that:

- Royal Commissions or Official Inquiries be empowered to require a person to answer questions or produce documents or things, notwithstanding any secrecy provision (with a list of secrecy provisions subject to this override power to be enumerated in statute)
- a person be granted immunity from any criminal, civil, administrative or disciplinary proceedings if they are required by a Royal Commission or Official Inquiry to provide information.

3. Independent National Security Legislation Monitor (INSLM) – *Report on the impact on journalists of section 35P of the ASIO Act (2015)*

On 21 October 2015, the then INSLM, the Hon. Roger Gyles AO QC completed a report on the impact on journalists of section 35P of the *Australian Security Intelligence Organisation Act 1979* (ASIO Act). The report discusses the impact on journalists of the operation of section 35P of the ASIO Act, which concerns offences for the disclosure of information relating to a special intelligence operation. The INSLM concluded that any restriction on freedom of expression by journalists should be proportional to maintaining national security. The *Counter-Terrorism Legislation Amendment Act (No. 1) 2016* implemented the INSLM's recommendations by amending section 35P so that the offence would only apply to members of the public (including journalists) in circumstances where the disclosure would endanger the health or safety of a person or prejudice the effective conduct of a special intelligence operation.

4. Productivity Commission – *Data Availability and Use, Inquiry Report (2017)*

On 8 May 2017, the Productivity Commission published its report on the ways for the government to improve the availability and use of public sector data, which led to the development and introduction of the Data Availability and Transparency Act 2022.

5. Parliamentary Joint Committee on Intelligence and Security (PJCIS) – Advisory Report on the National Security Legislation Amendment (Espionage and Foreign Interference) Bill 2017

The *National Security Legislation Amendment (Espionage and Foreign Interference) Act 2018* (EFI Act) replaced sections 70 and 79 of the *Crimes Act 1914* with the general secrecy offences in Part 5.6 of the Criminal Code. This includes section 122.4 which provides a criminal penalty for unauthorised disclosure of information by a current or former Commonwealth Officer. The PJCIS' advisory report on the Act's enabling Bill recommended that a sunset period of five years apply to proposed section 122.4. This recommendation was adopted, resulting in the section's sunset date of 29 December 2023. The report also recommended that the Attorney-General initiate a review of existing secrecy offences contained in other legislation, taking into account the set of principles contained in the ALRC report, *Secrecy Laws and Open Government in Australia* (see item 1 in this annexure).

The PJCIS report also made recommendations to refine the proposed public interest journalism defence in Part 5.6, including legislating a requirement that a journalist seeking to rely on the defence must reasonably believe that dealing with or holding information regulated by the general secrecy offences is in the public interest. The report's recommendations for the public interest journalism defence were implemented by the EFI Act.

6. PJCIS – *Inquiry into the impact of the exercise of law enforcement and intelligence powers on the freedom of the press (2020)*

On 4 July 2019, the PJCIS commenced an inquiry into the impact of the exercise of law enforcement and intelligence powers on the freedom of the press. In August 2020, the PJCIS recommended that the former Government prioritise the review of Commonwealth secrecy offences and consider whether defences for public interest journalism should be applied to other secrecy offences within Commonwealth legislation.

7. The Senate Environment and Communications References Committee – *Freedom of the Press (2021)*

On 23 July 2019, the Senate referred an inquiry into press freedom to the Environment and Communications References Committee for report by 4 December 2019. The inquiry's final report was completed in May 2021. The report made 17 recommendations relating to a range of matters, including the Review, reforms to the Freedom of Information regime, reforms to the *Public Interest Disclosure Act 2013* and the journalist shield provisions in the *Evidence Act 1995*. A number of the report's recommendations cross over with recommendations of the PJCIS press freedoms inquiry.

8. Royal Commission into Defence and Veteran Suicide – *Interim Report (2022)*

The interim report of the Royal Commission into Defence and Veteran Suicide (DVSRC) was presented to the Governor-General on 11 August 2022. The interim report recommended legislating a defence to the general secrecy offences in the Criminal Code and stated that defences to other secrecy offences would be needed to enable current and former Australian Defence Force members to provide information to the Royal Commission.

The Government responded to the DVSRC's interim report in September 2022 and agreed in-principle with this recommendation, noting that the application of secrecy offences to future Royal Commissions would be considered by the Review of Secrecy Provisions.