

EXPOSURE DRAFT

National Security Information (Criminal and Civil Proceedings) Regulations 2026

I, the Honourable Sam Mostyn AC, Governor-General of the Commonwealth of Australia, acting with the advice of the Federal Executive Council, make the following regulations.

Dated 2026

Sam Mostyn AC
Governor-General

By Her Excellency's Command

Michelle Rowland **[DRAFT ONLY—NOT FOR SIGNATURE]**
Attorney-General

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Part 1—Preliminary

1 Name

This instrument is the *National Security Information (Criminal and Civil Proceedings) Regulations 2026*.

2 Commencement

(1) Each provision of this instrument specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

Commencement information		
Column 1	**Column 2**	**Column 3**
Provisions	**Commencement**	**Date/Details**
1. The whole of this instrument	The day after this instrument is registered.	

Note: This table relates only to the provisions of this instrument as originally made. It will not be amended to deal with any later amendments of this instrument.

(2) Any information in column 3 of the table is not part of this instrument. Information may be inserted in this column, or information in it may be edited, in any published version of this instrument.

3 Authority

This instrument is made under the *National Security Information (Criminal and Civil Proceedings) Act 2004*.

4 Schedule 2

Each instrument that is specified in Schedule 2 to this instrument is amended or repealed as set out in the applicable items in that Schedule, and any other item in that Schedule has effect according to its terms.

5 Definitions

Note: A number of expressions used in this instrument are defined in the Act, including the following:

(a) civil proceeding;
(b) court official;
(c) document;
(d) federal criminal proceeding;
(e) national security information;
(f) special advocate.

In this instrument:

Act means the *National Security Information (Criminal and Civil Proceedings) Act 2004*.

approved information and communications technology equipment, for a security classified document or national security information to which a particular security classification is, or is to be, assigned, means information and communications technology equipment that is supplied, or approved, by the Commonwealth for security classified documents or national security information to which that security classification is, or is to be, assigned.

authorised recipient, in relation to a security classified document or national security information, means a person to whom the document or information has been disclosed, or may be disclosed, in a federal criminal proceeding or a civil proceeding in accordance with:

(a) a certificate, hearing, decision, notice, order or other process under the Act; or

(b) an order or process of the court in the proceeding; or

(c) a written authorisation given by the Attorney-General or a representative of the Attorney-General in the proceeding;

but does not include a judicial officer.

Class B security container means a security container that is fitted with an SCEC-endorsed combination lock.

classified document register means a register that includes details about security classified documents that are received, prepared or transferred in hard copy form.

Note: Section 16 sets out the information that must be recorded in the classified document register.

copy means to record or reproduce information in any medium.

Deputy Director-General of Security means a person who holds, or is acting in, a position known as Deputy Director-General of Security.

Director-General of Security means the Director-General of Security holding office under the *Australian Security Intelligence Organisation Act 1979*.

discrete area means an area within an enclosed building or office if:

(a) either:

(i) if the building or office is part of the precincts of a court—public access to the area is restricted; or

(ii) if the building or office is not part of the precincts of a court—there is no public access to the area; and

(b) access to the area by employees is controlled; and

(c) access to the area by visitors is strictly controlled and is on a needs basis.

eligible former judge means a former judge of any of the following courts:

(a) the High Court;

(b) a court that is or was created by the Parliament under Chapter III of the Constitution;

(c) the Supreme Court of a State or Territory;

(d) the District Court (or equivalent) of a State or Territory.

eligible legal practitioner means a person who:

(a) is enrolled as a legal practitioner of the High Court, of another federal court or of the Supreme Court of a State or Territory; and

(b) holds a practising certificate (however described); and

(c) has at least 5 years' legal advocacy experience; and

(d) holds a Negative Vetting Level 2 security clearance.

eligible senior counsel means a person who:

(a) is a Senior Counsel; and

(b) holds a Negative Vetting Level 2 security clearance.

Note: Senior Counsel is given an extended meaning by section 2B of the *Acts Interpretation Act 1901*.

judicial officer means a magistrate or a judge.

Negative Vetting Level 2 security clearance means a security clearance that:

(a) is issued by the Australian Government Security Vetting Agency or by another Commonwealth, State or Territory agency that is authorised or approved by the Commonwealth to issue security clearances; and

(b) permits ongoing access to information that has been assigned any of the following security classifications:

(i) PROTECTED;

(ii) SECRET;

(iii) TOP SECRET.

SCEC (short for Security Construction and Equipment Committee) means the Commonwealth Government interdepartmental committee that approves protective security products and endorses protective security services.

security classification means a protective marking assigned to national security information to indicate:

(a) the value of the information; and

(b) the minimum level of protection that the information must be afforded to protect it from compromise when it is being carried, used, stored, transmitted, transferred or disposed of.

Note: The following are examples of security classifications that may be, or may have been, assigned to information:

(a) PROTECTED;

(b) CONFIDENTIAL;

(c) SECRET;

(d) TOP SECRET;

(e) Codeword material;

(f) Restricted.

security classified document means:

(a) a document that is disclosed, or to be disclosed, in a federal criminal proceeding or a civil proceeding:

(i) to which a security classification has been assigned; or

(ii) that the Attorney-General, or a representative of the Attorney-General in the proceeding, has stated, in writing, is a security classified document; or

(b) a document that includes national security information that is disclosed, or to be disclosed, in a federal criminal proceeding or a civil proceeding; or

(c) a document that includes national security information that is included in a document referred to in paragraph (a) or (b); or

(d) a document that is or was prepared as referred to in paragraph 9(1)(a) or (b) for the purpose of a federal criminal proceeding or a civil proceeding.

security classified document storage area means an area to which entry and openings are secured at all times to limit access to the following:

(a) an authorised recipient in relation to security classified documents or national security information stored in the area;

(b) a person in the company of such an authorised recipient;

(c) a person authorised to access the area by such an authorised recipient;

(d) a judicial officer.

6 References to federal criminal proceeding or civil proceeding

In this instrument:

(a) a reference to a federal criminal proceeding is a reference to a federal criminal proceeding to which the Act applies in accordance with section 6 of the Act; and

(b) a reference to a civil proceeding is a reference to a civil proceeding to which the Act applies in accordance with section 6A of the Act.

Part 2—Protection of security classified documents and national security information

7 Purpose

This Part is made for the purposes of subsections 23(1) and 38C(1) of the Act and prescribes:

(a) requirements for accessing, storing, handling and destroying security classified documents and national security information; and

(b) requirements for preparing documents that relate to security classified documents or national security information.

Note 1: A person who contravenes a requirement prescribed for the purposes of subsection 23(1) or 38C(1) of the Act by this instrument may commit an offence (see sections 45A and 46FA of the Act).

Note 2: Subsections 23(2) and 38C(2) of the Act have the effect that this instrument does not apply in relation to certain matters to the extent that orders in force under section 22 or 38B of the Act apply in relation to those matters.

8 When this Part does not apply

If:

(a) an order is made under subsection 19(1A) or (3A) of the Act in relation to the disclosure, protection, storage, handling or destruction of national security information in a federal criminal proceeding or a civil proceeding; and

(b) the order is inconsistent with this Part to the extent that this Part relates to the disclosure, protection, storage, handling or destruction of national security information in the federal criminal proceeding or the civil proceeding; and

(c) the order was made on an application by the Attorney-General or a representative of the Attorney-General;

this Part does not apply to the extent of that inconsistency.

9 Preparation of documents relating to security classified documents or national security information

(1) This section applies to:

(a) an authorised recipient in relation to a security classified document who prepares a document (including a court record referred to in subsection 29(5) or 38I(5) of the Act) that includes information included in the security classified document; and

(b) an authorised recipient in relation to national security information that is disclosed, or to be disclosed, in a federal criminal proceeding or a civil proceeding, who prepares a document (including a court record referred to in subsection 29(5) or 38I(5) of the Act) that includes the national security information.

(2) The authorised recipient must prepare the document:

(a) if the document includes information from a security classified document or national security information that is assigned the security classification TOP SECRET or Codeword material—in an area approved by the Commonwealth for the purpose of preparing documents with that security classification; or

(b) in any other case—in a discrete area.

(3) If the document is to be prepared in electronic form, the authorised recipient must prepare the document:

(a) if the document includes information from a security classified document or national security information that is assigned the security classification TOP SECRET or Codeword material:

(i) on information and communications technology equipment approved by the Commonwealth for the purpose of preparing electronic documents with that security classification; and

(ii) in an area approved by the Commonwealth for the purpose of preparing documents with that security classification; or

(b) in any other case—by means of approved information and communications technology equipment for the document.

(4) The authorised recipient must ensure that the document is assigned a security classification that is equivalent to the most highly classified information included in the document.

(5) The security classification assigned to the document must be clearly recorded at the top and bottom of each page of the document.

(6) If the authorised recipient has any doubt about the security classification to be assigned to the document under subsection (4), the recipient must consult with the Commonwealth as to the appropriate classification to be assigned to the document.

Note: If the document is prepared in hard copy form, the authorised recipient must ensure that the document is recorded on the classified document register maintained by the recipient or to which the recipient has access (see section 16).

10 Copying security classified documents

(1) An authorised recipient in relation to a security classified document must not copy the document or any part of the document, or any information in the document, except in accordance with section 9.

(2) An authorised recipient in relation to a security classified document may request, in writing, the Attorney-General, or a representative of the Attorney-General in the proceeding to which the document relates, to give the recipient one or more copies of the document.

(3) A request under subsection (2) must state the following:

(a) the number of copies of the document required;

(b) the full name of the authorised recipient making the request;

(c) the full name of each other authorised recipient in relation to the document who is to be given a copy of the document.

11 Storage of security classified documents in hard copy form

(1) An authorised recipient in relation to a security classified document that is in hard copy form must store the document in a locked Class B security container.

(2) The security container must have a combination that is not known by any person other than:

(a) an authorised recipient in relation to all the security classified documents stored in the container; or

(b) an APS employee whose duties include responsibilities relating to the container.

(3) Subject to subsection (4), the security container must be located in a security classified document storage area.

(4) If any of the security classified documents stored in the security container are assigned the security classification TOP SECRET or Codeword material, the security container must be located in an area approved by the Commonwealth for the purpose of storing documents with that security classification.

(5) A person must not remove a security classified document from the security container unless:

(a) either:

(i) the person is an authorised recipient in relation to the document, and the person needs to remove the document for the purpose of the proceeding to which the document relates; or

(ii) the person is a judicial officer; and

(b) if the security container is located in an area approved by the Commonwealth for the purpose of storing documents that are assigned the security classification TOP SECRET or Codeword material—the person is permitted by the Commonwealth to access the area.

Note: Arrangements may need to be made with the Commonwealth to permit an authorised recipient in relation to the document, or a judicial officer, to access the area where the security container is located.

(6) If an authorised recipient in relation to a security classified document that is assigned the security classification TOP SECRET or Codeword material removes the document from the security container (other than for the purpose of transferring the document to another authorised recipient in relation to the document), the recipient must:

(a) make a written record of the following:

(i) the authorised recipient's full name;

(ii) the date and time when the document was removed;

(iii) the place where the document is to be taken; and

(b) put the record in the security container.

Note: If the authorised recipient transfers the document to another authorised recipient in relation to the document, the authorised recipient who transfers the document must ensure that certain information is recorded on the classified document register maintained by the recipient or to which the recipient has access (see section 16).

12 Storage and transmission of security classified documents or national security information in electronic form

(1) An authorised recipient in relation to a security classified document or national security information:

(a) must not store the document or information in electronic form except on approved information and communications technology equipment for the document or information; and

(b) must not transmit the document or information in electronic form unless the equipment used to transmit and to receive the document or information is approved information and communications technology equipment for the document or information.

(2) When the approved information and communications technology equipment is not being used, the equipment must, subject to subsection (3):

(a) be stored in a locked Class B security container located in a security classified document storage area; or

(b) if it is too large to be stored in a Class B security container—be located in a security classified document storage area.

(3) If any of the security classified documents or national security information stored on, or transmitted by or to, the approved information and communications technology equipment are assigned the security classification TOP SECRET or Codeword material, the equipment must be located in an area approved by the Commonwealth for the purpose of storing documents or information with that security classification.

(4) A Class B security container in which the approved information and communications technology equipment is stored must have a combination that is not known to any person other than:

(a) an authorised recipient in relation to all the security classified documents and national security information stored in the container; or

(b) an APS employee whose duties include responsibilities relating to the container.

(5) A person must not access approved information and communications technology equipment, or remove it from a security container, unless:

(a) either:

(i) the person is an authorised recipient in relation to all the security classified documents and national security information stored on, or transmitted by or to, the equipment, and the person needs to access any of those documents or information for the purpose of the proceeding to which the documents or information relate; or

(ii) the person is a judicial officer; and

(b) if the equipment is located in an area approved by the Commonwealth for the purpose of storing documents or information that are assigned the security classification TOP SECRET or Codeword material—the person is permitted by the Commonwealth to access the area.

Note: Arrangements may need to be made with the Commonwealth to permit an authorised recipient in relation to the document or information, or a judicial officer, to access the area where the equipment is located.

(6) When the approved information and communications technology equipment is not being used and, if it is capable of being secured by a password, the equipment must be secured by a password that is not known by any person other than:

(a) an authorised recipient in relation to all the security classified documents and national security information stored on, or transmitted by or to, the equipment who is handling the equipment for the purposes of the proceeding to which the documents or information relates; or

(b) an APS employee whose duties include responsibilities relating to the equipment.

(7) Subsection (8) applies in relation to the approved information and communications technology equipment if:

(a) a security classified document or national security information that is assigned the security classification TOP SECRET or Codeword material is stored on, or has been transmitted by or to, the equipment; and

(b) the equipment is stored in a Class B security container.

(8) If the approved information and communications technology equipment is removed from the security container by an authorised recipient in relation to a security classified document or national security information stored on, or transmitted by or to, the equipment, the recipient must:

(a) make a written record of the following:

(i) the authorised recipient's full name;

(ii) the date and time when the equipment was removed;

(iii) the place where the equipment is to be taken; and

(b) put the record in the security container.

13 Handling security classified documents

(1) An authorised recipient in relation to a security classified document may only handle the document for the purpose of the proceeding to which the document relates.

(2) Except for the purpose of carrying the security classified document or using it in court, the authorised recipient may only:

(a) if the document is assigned the security classification TOP SECRET or Codeword material—handle the document in an area approved by the Commonwealth for the purpose of handling documents with that security classification; or

(b) in any other case—handle the document in a discrete area.

(3) When handling the document, the authorised recipient must ensure that the document cannot be viewed by any person other than:

(a) an authorised recipient in relation to the document; or

(b) a judicial officer.

14 Handling approved information and communications technology equipment

(1) Approved information and communications technology equipment on which a security classified document or national security information is stored may be handled only by an authorised recipient in relation to the document or information for the purpose of the proceeding to which the document or information relates.

(2) Except when the approved information and communications technology equipment is being carried or used in court, the authorised recipient may only:

(a) if any security classified document or national security information stored on the equipment is assigned the security classification TOP SECRET or Codeword material—handle the equipment in an area approved by the Commonwealth for the purpose of handling documents or information with that security classification; or

(b) in any other case—handle the equipment in a discrete area.

(3) When handling the approved information and communications technology equipment, the authorised recipient must ensure that any security classified document or national security information stored on the equipment cannot be viewed by any person other than:

(a) an authorised recipient in relation to the document or information; or
(b) a judicial officer.

15 Carrying security classified documents

Carrying documents assigned security classification TOP SECRET or Codeword material in an area approved by the Commonwealth

(1) An authorised recipient in relation to a security classified document that is assigned the security classification TOP SECRET or Codeword material must, when carrying the document in an area approved by the Commonwealth for the purpose of carrying documents of that classification, ensure that the document cannot be viewed by any person other than:
(a) an authorised recipient in relation to the document; or
(b) a judicial officer.

Carrying other security classified documents in a discrete area

(2) An authorised recipient in relation to a security classified document that is not assigned the security classification TOP SECRET or Codeword material must, when carrying the document in a discrete area, ensure that the document cannot be viewed by any person other than:
(a) an authorised recipient in relation to the document; or
(b) a judicial officer.

Carrying security classified documents outside relevant areas

(3) An authorised recipient in relation to a security classified document must not carry the document:
(a) if the document is assigned the security classification TOP SECRET or Codeword material—outside an area approved by the Commonwealth for the purpose of carrying documents of that classification; or
(b) in any other case—outside a discrete area;
unless:
(c) the document is inside 2 SCEC-approved single use bags; and
(d) the document is in a locked container approved by the SCEC; and
(e) any keys for the container are removed from the container and are retained by the authorised recipient; and
(f) the document remains in the custody and control of the authorised recipient.

Giving a security classified document to another person to carry

(4) An authorised recipient in relation to a security classified document (including a security classified document that is in a locked security container) must not give the document to another person for the purpose of carrying it unless the other person is:
(a) an SCEC endorsed courier; or
(b) another authorised recipient in relation to the document; or

(c) a judicial officer.

(5) A security classified document that is to be given to an SCEC endorsed courier must be inside 2 SCEC-approved single use bags.

16 Classified document register

(1) An authorised recipient in relation to a security classified document must maintain, or have access to, a classified document register.

(2) As soon as practicable after an authorised recipient receives or prepares a security classified document in hard copy form, or transfers such a document to another person, the recipient must record the following information in the classified document register:

(a) if the document has a unique reference number—that number;

(b) the title or subject of the document;

(c) the security classification of the document, if any;

(d) the authorised recipient's full name;

(e) the date the authorised recipient received, prepared or transferred the document;

(f) if the document was transferred—the name of the person to whom the document was transferred;

(g) details of any carriage of the document, including the date of the carriage.

(3) However, an authorised recipient must not record any national security information in the register.

(4) For the purposes of this section, an authorised recipient who removes a security classified document from a security container as referred to in subsections 11(5) and (6) is not taken to have received the document.

17 Security classified documents and national security information to remain in Australia

An authorised recipient in relation to a security classified document or national security information must not take, or send (including by electronic transmission), the document or information out of Australia without the permission of the Commonwealth.

18 Return and destruction of security classified documents

(1) This section does not apply in relation to security classified documents that are in the possession of a court or a registry of a court.

(2) This section:

(a) has effect subject to the *Archives Act 1983* and is not a requirement for the purposes of paragraph 24(2)(a) of that Act; and

(b) has effect subject to any law of a State or Territory that makes provision in relation to the archiving of documents.

Note: This subsection preserves the operation of the *Archives Act 1983* and equivalent State and Territory laws in relation to security classified documents to which those laws apply. This section will not apply in relation to the documents.

Returning security classified document after conclusion of proceedings

(3) Subject to subsection (4), an authorised recipient who has custody or control of a security classified document that relates to a federal criminal proceeding or a civil proceeding must give the document to a representative of the Attorney-General in the proceeding:

(a) within 28 days after the conclusion of the proceeding; or

(b) within such longer period as is agreed in writing, before the end of the 28-day period, between a representative of the Attorney-General in the proceeding and the authorised recipient.

Returning security classified document if legal representative for a party in proceedings ceases to act for the party

(4) If the authorised recipient is a legal representative who has ceased to act for a party in the proceeding, the recipient must give the security classified document to:

(a) a representative of the Attorney-General in the proceeding; or

(b) the new legal representative (if any) of the party;

within:

(c) 28 days after ceasing to act; or

(d) such longer period as is agreed in writing, before the end of the 28-day period, between a representative of the Attorney-General in the proceeding and the authorised recipient.

Destroying security classified documents

(5) If, under subsection (3) or (4), a security classified document is given to a representative of the Attorney-General in hard copy form, the representative must ensure that the document is destroyed in accordance with Commonwealth requirements.

Deleting etc. security classified documents in electronic form

(6) If, under subsection (3) or (4), a security classified document is given to a representative of the Attorney-General in electronic form, the representative must ensure that:

(a) the document is deleted from the approved information and communications technology equipment on which it is stored, in accordance with Commonwealth requirements; and

(b) as far as practicable, all record of the document is removed from that equipment, including, if necessary, by destroying all or part of the equipment in accordance with Commonwealth requirements.

(7) If an authorised recipient gives a security classified document to a representative of the Attorney-General under subsection (3) or (4), the authorised recipient may view:

(a) the destruction of the document under subsection (5); or

(b) the deletion of the document under subsection (6).

When proceedings conclude

(8) For the purposes of this section, a proceeding does not conclude until:

(a) if an appeal may be brought against the decision or order that disposes of the proceeding but no such appeal is brought—the end of the period within which the appeal may be brought; or

(b) if such an appeal is brought—the appeal is finally determined or otherwise disposed of.

19 Return of Commonwealth property relating to security classified documents

(1) If an authorised recipient has custody or control of Commonwealth property relating to a security classified document for the purpose of a federal criminal proceeding or a civil proceeding, the authorised recipient must return the property to the Attorney-General's Department, or a representative of the Attorney-General in the proceeding, within:

(a) 28 days after the earlier of the following:

(i) the conclusion of the proceeding;

(ii) if the authorised recipient is a legal representative who has ceased to act in the proceeding—the recipient ceasing to act in the proceeding; or

(b) such longer period as is agreed in writing, before the end of the 28-day period, between a representative of the Attorney-General in the proceeding and the authorised recipient.

(2) For the purposes of this section, a proceeding does not conclude until:

(a) if an appeal may be brought against the decision or order that disposes of the proceeding but no such appeal is brought—the end of the period within which the appeal may be brought; or

(b) if such an appeal is brought—the appeal is finally determined or otherwise disposed of.

Part 3—Expected disclosure

20 Notice by prosecutor, defendant or defendant's legal representative of expected disclosure

For the purposes of paragraph 24(2)(a) of the Act, Form 1 of Schedule 1 is prescribed.

21 Notice by party or party's legal representative of expected disclosure

For the purposes of paragraph 38D(3)(a) of the Act, Form 2 of Schedule 1 is prescribed.

Part 4—Special advocates

22 Appointment requirements for special advocates

For the purposes of paragraph 38PA(2)(a) of the Act, the following requirements are specified in relation to the appointment of a person as a special advocate of a party to a civil proceeding:

(a) the person is:
  (i) an eligible former judge; or
  (ii) an eligible senior counsel; or
  (iii) an eligible legal practitioner;

(b) the person has received training in accessing, storing, handling and destroying security classified documents and national security information for the purposes of exercising powers, or performing functions, as a special advocate of a party to a civil proceeding;

(c) the person is not:
  (i) a member of the Parliament of the Commonwealth or a State or the Legislative Assembly of a Territory; or
  (ii) the Director-General of Security or a Deputy Director-General of Security; or
  (iii) the Director of Public Prosecutions or a person performing a similar function appointed under the law of a State or Territory; or
  (iv) the Solicitor-General of the Commonwealth, or of a State or Territory;

(d) the Attorney-General is satisfied that the person is suitable for appointment because of the person's qualifications, training or experience.

Note: A court may appoint a person as a special advocate of a party to a civil proceeding only if the person meets the requirements specified in this section (see paragraph 38PA(2)(a) of the Act).

23 Remuneration

(1) For the purposes of paragraph 38PI(2)(a) of the Act, this section determines terms relating to remuneration of persons serving as special advocates.

Eligible former judges and eligible senior counsel

(2) If a special advocate of a party to a civil proceeding is an eligible former judge or eligible senior counsel, the special advocate may charge the Commonwealth for the time spent by the special advocate in the performance of their functions, or the exercise of their powers, as a special advocate of the party to the proceeding as follows:

(a) per day—either:

(i) at the maximum daily rate payable to senior counsel without the approval of the Attorney-General, as set out in the *Legal Services Directions 2025*; or

(ii) at such higher rate as the Attorney-General approves;

(b) per hour—either:

(i) at one-sixth of the maximum daily rate mentioned in paragraph (a), up to a maximum of 6 hours per day; or

(ii) at such higher rate as the Attorney-General approves.

Eligible legal practitioners

(3) If a special advocate of a party to a civil proceeding is an eligible legal practitioner, the special advocate may charge the Commonwealth for the time spent by the special advocate in the performance of their functions, or the exercise of their powers, as a special advocate of the party to the proceeding as follows:

(a) per day—either:

(i) at the maximum daily rate payable to junior counsel without the approval of the Attorney-General, as set out in the *Legal Services Directions 2025*; or

(ii) at such higher rate as the Attorney-General approves;

(b) per hour—either:

(i) at one-sixth of the maximum daily rate mentioned in paragraph (a), up to a maximum of 6 hours per day; or

(ii) at such higher rate as the Attorney-General approves.

24 Conflicts of interest

(1) For the purposes of paragraph 38PI(2)(b) of the Act, this section determines terms relating to conflicts of interest of persons serving as special advocates.

Avoiding conflicts of interest

(2) A special advocate of a party to a civil proceeding must take reasonable steps to avoid any conflict of interest (real or apparent) in connection with the proper performance of their functions, or the exercise of their powers, as a special advocate of the party to the proceeding.

Disclosure of interests to court

(3) A special advocate of a party to a civil proceeding must give the court that appointed the special advocate written notice of all interests, pecuniary or

otherwise, that the special advocate has or acquires and that conflict or could conflict with the proper performance of their functions, or the exercise of their powers, as a special advocate of the party to the proceeding.

25 Immunity from legal action

(1) For the purposes of paragraph 38PI(2)(c) of the Act, this section determines terms relating to immunity of persons serving as special advocates.

(2) No action, suit or proceeding may be brought against a person who is, or has been, a special advocate of a party to a civil proceeding in relation to anything done, or omitted to be done, in good faith by the person:

(a) in the performance, or purported performance, of their functions as a special advocate of the party to the proceeding; or

(b) in the exercise, or purported exercise, of their powers as a special advocate of the party to the proceeding.

Part 5—Application, saving and transitional provisions

26 Definitions

In this Part:

commencement day means the day this instrument commences.

old regulations means the *National Security Information (Criminal and Civil Proceedings) Regulation 2015*.

27 Things done under the old regulations

(1) Subject to section 28, if:

(a) an instrument (the ***subordinate instrument***) was made for a particular purpose under a provision of the old regulations, as in force immediately before the commencement day; and

(b) the subordinate instrument was in effect or in force immediately before the commencement day; and

(c) the subordinate instrument could be made for that purpose under a provision of this instrument;

then, despite the repeal of the old regulations by this instrument, the subordinate instrument continues in effect or in force, on and after the commencement day, as if it were made for that purpose under that provision of this instrument.

(2) If:

(a) any other thing was done for a particular purpose under the old regulations as in force immediately before the commencement day; and

(b) the thing could be done for that purpose under this instrument;

the thing has effect for the purposes of this instrument as if it had been done for that purpose under this instrument.

(3) Without limiting subsection (2), a reference in that subsection to a thing being done includes a reference to a notice, application or other instrument being given or made.

28 Application of this instrument

(1) This instrument applies in relation to:

(a) a security classified document that is disclosed, or to be disclosed, in or for the purpose of a federal criminal proceeding or a civil proceeding that begins on or after the commencement day; and

(b) national security information that is disclosed, or to be disclosed, in a federal criminal proceeding or a civil proceeding that begins on or after the commencement day.

Pre-commencement proceedings that concluded before commencement

(2) Despite the repeal of the old regulations by Schedule 2 to this instrument, the old regulations continue to apply in relation to:

(a) a security classified document that was disclosed in or for the purpose of a federal criminal proceeding or a civil proceeding that began, and concluded, before the commencement day; and

(b) national security information that was disclosed in a federal criminal proceeding or a civil proceeding that began, and concluded, before the commencement day.

Pre-commencement proceedings that had not concluded before commencement

(3) Subject to subsection (4), the old regulations continue to apply in relation to:

(a) a security classified document that is disclosed, or to be disclosed, in or for the purpose of a federal criminal proceeding or a civil proceeding that began before the commencement day but had not concluded before the commencement day; and

(b) national security information that is disclosed, or to be disclosed, in a federal criminal proceeding or a civil proceeding that began before the commencement day but had not concluded before the commencement day.

(4) Despite subsection (3):

(a) sections 17 and 18 of the old regulations do not apply in relation to a proceeding mentioned in that subsection; and

(b) sections 18 and 19 of this instrument apply in relation to such a proceeding.

Schedule 1—Forms

Note: See sections 20 and 21.

Form 1—Notice of expected disclosure of national security information in a federal criminal proceeding

COMMONWEALTH OF AUSTRALIA

National Security Information (Criminal and Civil Proceedings) Act 2004

NOTICE BY *PROSECUTOR/*DEFENDANT/*DEFENDANT'S LEGAL REPRESENTATIVE OF EXPECTED DISCLOSURE OF NATIONAL SECURITY INFORMATION IN A FEDERAL CRIMINAL PROCEEDING

TO The Attorney-General

1. I, [*name*], am the *prosecutor/*defendant/*defendant's legal representative in the following federal criminal proceeding: [*name or description of proceeding*].

2. I give notice under section 24 of the *National Security Information (Criminal and Civil Proceedings) Act 2004* that I *know/*believe that:

   *(a) I will disclose national security information in the proceeding.

   *(b) The person known as [*name or code*] whom I intend to call as a witness will disclose national security information *in giving evidence/*by the person's mere presence in the proceeding.

   *(c) The person known as [*name or code*] is required by subpoena or other order of the court, issued or made on my application, to disclose national security information, other than as a witness, in the proceeding.

*3. The national security information that will be disclosed is [*include a description of the information*].

OR

*3. The national security information that will be disclosed is contained in the following *document/*documents: [*give details of each document, for example, the title, author and date of issue, if applicable*].

A copy of each document, or the relevant extract from each document that contains the national security information, accompanies this notice.

Dated:

.....

[*signature of *prosecutor/*defendant/*defendant's legal representative*]

[*Insert particulars of person signing this notice, including: full name; full address; telephone number; fax number; email address; and (if not already inserted) name, address, telephone number, fax number and email address of defendant's legal representative*.]

* *Omit if not applicable.*

Note: The person giving this notice must advise the court and the other people involved in the proceeding that the notice has been given (see subsection 24(3) of the *National Security Information (Criminal and Civil Proceedings) Act 2004*).

Form 2—Notice of expected disclosure of national security information in a civil proceeding

COMMONWEALTH OF AUSTRALIA

National Security Information (Criminal and Civil Proceedings) Act 2004

NOTICE BY *PARTY/*PARTY'S LEGAL REPRESENTATIVE OF EXPECTED DISCLOSURE OF NATIONAL SECURITY INFORMATION IN A CIVIL PROCEEDING

TO *The Attorney-General/*The Minister appointed under subsection 6A(3) of the *National Security Information (Criminal and Civil Proceedings) Act 2004*/*The Minister appointed under subsection 6A(4) of the *National Security Information (Criminal and Civil Proceedings) Act 2004*

1. I, [*name*], am *a party/*the legal representative of a party to the following civil proceeding: [*name or description of proceeding*].

2. I give notice under section 38D of the *National Security Information (Criminal and Civil Proceedings) Act 2004* that I *know/*believe that:

   *(a) I will disclose national security information in the proceeding.

   *(b) The person known as [*name or code*] whom I intend to call as a witness in the proceeding will disclose national security information *in giving evidence/*by the person's mere presence in the proceeding.

   *(c) The person known as [*name or code*] is required by subpoena or other order of the court, issued or made on my application, to disclose national security information, other than as a witness, in the proceeding.

*3. The national security information that will be disclosed is [*include a description of the information*].

OR

*3. The national security information that will be disclosed is contained in the following *document/*documents: [*give details of each document, for example, the title, author and date of issue, if applicable*].

A copy of each document, or the relevant extract from each document that contains the national security information, accompanies this notice.

Dated:

…….

[*signature of *party/*party's legal representative*]

[*Insert particulars of person signing this notice, including: full name; full address; telephone number; fax number; email address; and (if not already inserted) name, address, telephone number, fax number and email address of party's legal representative.*]

* *Omit if not applicable*.

Note: The person giving this notice must advise the court and the other people involved in the proceeding that the notice has been given (see subsection 38D(4) of the *National Security Information (Criminal and Civil Proceedings) Act 2004*).

Schedule 2—Repeals

National Security Information (Criminal and Civil Proceedings) Regulation 2015

1 The whole of the instrument

Repeal the instrument.