

National Security Legislation Amendment Act 2018 - Espionage and Foreign Interference

Summary of Offences

Offences	Information Involved	Criminal Code Act 1995	Penalty
DIVISION 82 – SABOTAGE			
Sabotage – involving foreign principal with intention as to national security	Damage to public infrastructure	Section 82.3	25 years
Sabotage – involving foreign principal reckless as to national security	Damage to public infrastructure	Section 82.4	20 years
Sabotage – with intention as to national security	Damage to public infrastructure	Section 82.5	20 years
Sabotage – reckless as to national security	Damage to public infrastructure	Section 82.6	15 years
Introducing vulnerability – with intention as to national security	Cause vulnerability to public infrastructure	Section 82.7	15 years
Introducing vulnerability – reckless as to national security	Cause vulnerability to public infrastructure	Section 82.8	10 years
Preparing for or planning sabotage	Preparing for or planning for sabotage offence	Section 82.9	7 years
DIVISION 91 - SUBDIVISION A – ESPIONAGE			
Espionage – dealing with information concerning national security which is or will be made available to foreign principal – intention as to national security	SECRET, TOP SECRET, and information concerning <i>national security</i> . The key is intent to prejudice Australia’s national security or advantage the <i>national security</i>	Subsection 91.1(1)	Life
90.4 Definition of national security includes the defence and protection of a country, its territorial integrity, and its people, the carrying out of the country’s responsibilities and the country’s political, military or economic relations.			



Espionage – dealing with information concerning national security which is or will be made available to foreign principal – reckless as to national security	SECRET, TOP SECRET, and information concerning <i>national security</i> the key is the person is reckless that it will prejudice Australia’s national security or advantage the <i>national security</i>	Subsection 91.1(2)	25 years
Espionage – dealing with information which is or will be made available to foreign principal – intention as to <i>national security</i>	Classified, unclassified and publicly available information, the key element is someone’s intent to prejudice <i>national security</i>	Subsection 91.2(1)	25 years
<p>Example: Person A is a Commonwealth official employed as an analyst in a government department. Person A is strongly opposed to Australia’s intention to negotiate a treaty with Country B. Person A compiles a report informed by the knowledge gained through their role as an analyst in the government department, which contains an aggregation of sensitive, but publically available, information – informed by expertise Person A has developed as a government analyst. Person A provides this to an official of Country B with the intention of convincing Country B not to negotiate the treaty with Australia, thereby harming Australia’s international relations.</p>			
Espionage – dealing with information which is or will be made available to foreign principal – reckless as to <i>national security</i>	Classified, unclassified and publicly available information, the key element is someone’s reckless that it will prejudice <i>national security</i>	Subsection 91.2(2)	20 years
Espionage – security classified information etc – primary purpose is to make security classified information available to a foreign principal	SECRET and TOP SECRET	Section 91.3	20 years
Espionage – aggravated offence (underlying offences ss 91.1(2), 91.2, 91.3) where: <ul style="list-style-type: none"> the person dealt with information or an article from a foreign intelligence agency the person dealt with 5 or more records or articles each of which has a security classification the person altered a record or article to remove or conceal its security classification at the time the person dealt with the information or article, the person held a security clearance allowing access to information that has a security classification of at least SECRET. 	All information including classified, unclassified and publicly available information	Section 91.6	Life imprisonment if maximum penalty for underlying offence is 25 years 25 years if maximum penalty for underlying offence is 20 years



SUBDIVISION B – ESPIONAGE ON BEHALF OF FOREIGN PRINCIPAL

Espionage on behalf of foreign principal – intention as to <i>national security</i>	All information, the key is intent to prejudice Australia’s national security or advantage the <i>national security</i> of a foreign country	Subsection 91.8(1)	25 years
<p>Example: Person A is an official of Country D temporarily located in Australia, but does not have diplomatic immunity. Person A knows Person B, an employee of a Commonwealth government department, and is aware that Person B is unhappy at work as they believe they have been overlooked for promotion. Person B tells Person A that they have made copies of classified information and is willing to pass it to Person A. Person A is keen to gain access to the documents as it would give Country D a significant advantage in upcoming treaty negotiations. Person A obtains the documents from Person B.</p>			
Espionage on behalf of foreign principal – reckless as to <i>national security</i>	All information. The person is reckless that it will prejudice Australia’s national security or advantage the <i>national security</i> of a foreign country	Subsection 91.8(2)	20 years
Espionage on behalf of foreign principal – conduct on behalf of foreign principal	All information	Subsection 91.8(3)	15 years

SUBDIVISION C – ESPIONAGE-RELATED OFFENCES

Offence of soliciting or procuring an espionage offence or making it easier to do it	The key element is conduct i.e. solicitation or procuring activities on behalf of a foreign principal	Section 91.11	15 years
<p>Example: Person C is employed by a foreign intelligence service undertaking operations in Australia. Person C joins Person D’s soccer team and establishes a personal relationship with Person D. Person C does so with the intention of procuring or soliciting Person D to provide classified information at some future date.</p>			
Offence of preparing for an espionage offence	The key element is conduct i.e. preparation for or planning an offence against Subdivision A (espionage) or B (espionage on behalf of).	Section 91.12	15 years





DIVISION 92 – SUBDIVISION B – FOREIGN INTERFERENCE			
Intentional foreign interference – interference generally	Relating to conduct	Subsection 92.2(1)	20 years
Intentional foreign interference – interference involving targeted person	Relating to conduct	Subsection 92.2(2)	20 years
Reckless foreign interference – interference generally	Relating to conduct	Subsection 92.3(1)	15 years
Reckless foreign interference – interference involving targeted person	Relating to conduct	Subsection 92.3(2)	15 years
Preparing for a foreign interference offence	Relating to conduct	Section 92.4	10 years
Knowingly supporting a foreign intelligence agency	Relating to conduct	Section 92.7	15 years
Recklessly supporting a foreign intelligence agency	Relating to conduct	Section 92.8	10 years
Knowingly funding or being funded by a foreign intelligence agency	Relating to conduct	Section 92.9	15 years
Recklessly funding or being funded by a foreign intelligence agency	Relating to conduct	Section 92.10	10 years
DIVISION 92A – THEFT OF TRADE SECRETS INVOLVING FOREIGN GOVERNMENT PRINCIPAL			
Theft of trade secrets involving foreign government principal	Commercially sensitive information	Section 92A.1	15 years
<p>Example: Person A is employed by an Australian company and works with sensitive satellite imaging technology. The technology is only able to be accessed and used by a very limited number of authorised personnel and is not public knowledge. Person A is approached by a representative of the government of Country X, who makes it clear that the technology would be very useful to Country X, and would have a high commercial value if it was provided to them. Person A secretly make copies of information related to the satellite imaging technology. Government X pays Person A a significant amount of money each time Person A provides copies of the sensitive information to them.</p>			
DIVISION 132 – OTHER PROPERTY OFFENCE			
Damaging Commonwealth property	Damage to Commonwealth entity property	Section 132.8A	10 years



PART 5.6 – SECRECY OF INFORMATION

Communication of <i>inherently harmful information</i>	SECRET, TOP SECRET, intelligence information (domestic and foreign) and law enforcement agency information (domestic and foreign)	Subsection 122.1(1)	7 years
Other dealings with <i>inherently harmful information</i>	SECRET, TOP SECRET, intelligence information (domestic and foreign) and law enforcement agency information (domestic and foreign)	Subsection 122.1(2)	3 years
<i>Inherently harmful information</i> removed from, or held outside, proper place of custody	SECRET, TOP SECRET, intelligence information (domestic and foreign) and law enforcement agency information (domestic and foreign)	Subsection 122.1(3)	3 years
Failure to comply with lawful direction regarding <i>inherently harmful information</i>	SECRET, TOP SECRET, intelligence information (domestic and foreign) and law enforcement agency information (domestic and foreign)	Subsection 122.1(4)	3 years
Communication <i>causing harm to Australia's interests</i>	<p>Information interfering with or prejudicing criminal offences or functions of AFP</p> <p>Information causing harm or prejudice to:</p> <ul style="list-style-type: none"> • the prosecution/punishment of a law of the commonwealth • international relations • health or safety of public • security or defence of Australia <p>Likely to cover classified or sensitive information. Unlikely to cover unclassified or publicly available information.</p>	Subsection 122.2(1)	7 years



<p>Other conduct <i>causing harm to Australia's interests</i></p>	<p>Information interfering with or prejudicing criminal offences or functions of AFP</p> <p>Information causing harm or prejudice to:</p> <ul style="list-style-type: none"> • the prosecution/punishment of a law of the commonwealth • international relations • health or safety of public • security or defence of Australia <p>Likely to cover classified or sensitive information. Unlikely to cover unclassified or publicly available information.</p>	<p>Subsection 122.2(2)</p>	<p>3 years</p>
<p>Information removed from, or held outside, proper place of custody</p>	<p>Information interfering with or prejudicing criminal offences or functions of AFP</p> <p>Information causing harm or prejudice to:</p> <ul style="list-style-type: none"> • the prosecution/punishment of a law of the commonwealth • international relations • health or safety of public • security or defence of Australia <p>Likely to cover classified or sensitive information. Unlikely to cover unclassified or publicly available information.</p>	<p>Subsection 122.2(3)</p>	<p>3 years</p>



Failure to comply with direction regarding information	Information interfering with or prejudicing criminal offences or functions of AFP Information causing harm or prejudice to: <ul style="list-style-type: none"> • international relations • health or safety of public • security or defence of Australia Likely to cover classified or sensitive information. Unlikely to cover unclassified or publicly available information.	Subsection 122.2(4)	3 years
Aggravated offence (underlying offence: 122.1 or 122.2) where: <ul style="list-style-type: none"> • record marked with ;'for Australian eyes only' • involves 5 or more records each of which has a security classification • remove or conceal security classification • the person holds a security clearance 	SECRET, TOP SECRET and AUSTEO information	Section 122.3	10 years if the underlying offence is 7 years 5 years if the underlying offence is 3 years
Unauthorised disclosure of information by current and former Commonwealth officers etc	Any information obtained by reason of being/having been employed by Commonwealth entity	Section 122.4	2 years
Communicating and dealing with information by non-Commonwealth officers etc	SECRET, TOP SECRET, damages the security or defence of Australia, interference with or prejudice criminal offences, cause harm or prejudice to health or safety of the public. Likely to cover classified or sensitive information. Unlikely to cover unclassified or publicly available information.	Section 122.4A	5 years (communicating) 2 years (dealing)
Division 136 – False or misleading statements in applications			
Aggravated offence (underlying offence 136.1(1)) giving false or misleading information.	Information given in relation to an application for, or the maintenance of, an Australian Government security clearance with knowledge that the information is false or misleading	Section 137.1A	5 years

