

2022-2023

The Parliament of the  
Commonwealth of Australia

THE SENATE

*Presented and read a first time*

**Defence Capability Assurance and  
Oversight Bill 2023**

**No. , 2023**

*(Senator Fawcett)*

**A Bill for an Act to establish the Defence Capability  
Assurance Agency, the Inspector-General of  
Defence Capability Assurance and the  
Parliamentary Joint Committee on Defence, and  
for related purposes**



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1 **A Bill for an Act to establish the Defence Capability**  
2 **Assurance Agency, the Inspector-General of**  
3 **Defence Capability Assurance and the**  
4 **Parliamentary Joint Committee on Defence, and**  
5 **for related purposes**

6 The Parliament of Australia enacts:

7 **Part 1—Preliminary**  
8

9 **1 Short title**

10 This Act is the *Defence Capability Assurance and Oversight Act*  
11 *2023*.

Section 2

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1 **2 Commencement**

2 (1) Each provision of this Act specified in column 1 of the table  
3 commences, or is taken to have commenced, in accordance with  
4 column 2 of the table. Any other statement in column 2 has effect  
5 according to its terms.  
6

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<b>Commencement information</b>		
<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>
<b>Provisions</b>	<b>Commencement</b>	<b>Date/Details</b>
1. Sections 1 and 2 and anything in this Act not elsewhere covered by this table	The day this Act receives the Royal Assent.	
2. Sections 3 to 106	The day after the day on which the Consolidated Revenue Fund is appropriated under an Act to the Department in which this Act is administered for payment for the purposes of this Act.	

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7 Note: This table relates only to the provisions of this Act as originally  
8 enacted. It will not be amended to deal with any later amendments of  
9 this Act.

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

13 **3 Objects of this Act**

14 The main objects of this Act are to:

- 15 (a) expedite the procurement of defence capability by providing  
16 capability managers and the Australian Government a high  
17 degree of confidence in the veracity and completeness of the  
18 information they use to make timely, risk-informed  
19 decisions; and  
20 (b) provide assurance to capability managers, the Australian  
21 Government and the Parliament that weapons systems will be



- 1 available when required and effective against extant and  
2 emerging threats; and
- 3 (c) make existing defence procurement processes and  
4 requirements more effective and efficient by ensuring:
- 5 (i) that risk assessment throughout the capability life cycle  
6 is consistently conducted by people who have  
7 appropriate qualifications and relevant experience; and
- 8 (ii) the assessment and reporting of risk is independent, free  
9 from overt or unintended bias or influence; and
- 10 (iii) identified risk is transparent to decision-makers; and
- 11 (iv) proposed risk mitigations are effective.

#### 12 4 Simplified outline of this Act

13 This Act provides for enhanced capability assurance of defence  
14 materiel programs.

15 This Act establishes the Defence Capability Assurance Agency.  
16 The Agency will conduct capability assurance of defence materiel  
17 programs and establish an appropriately qualified workforce to  
18 conduct test and evaluation and risk assessments for defence  
19 materiel programs. The Agency also has a Defence Capability  
20 Assurance Regulator function, which is to be facilitated by an  
21 industry partner.

22 This Act establishes the Inspector-General of Defence Capability  
23 Assurance. The Inspector-General will provide oversight of the  
24 Defence Department, the Defence Force and the Defence  
25 Capability Assurance Agency and can inquire into particular  
26 defence materiel programs.

27 This Act also provides for a Parliamentary Joint Committee on  
28 Defence. The Committee will provide oversight of the performance  
29 of the Defence Capability Assurance Agency and the  
30 Inspector-General, and review and report to the Parliament on  
31 matters relating to the defence of Australia and defence agencies.

Section 5

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1 **5 Definitions**

2 In this Act:

3 **AGO** means that part of the Defence Department known as the  
4 Australian Geospatial-Intelligence Organisation.

5 **ASD** means the Australian Signals Directorate.

6 **Board** means the Board of the Defence Capability Assurance  
7 Agency.

8 **Board member** means a member of the Board and includes the  
9 Chair of the Board and Deputy Chair of the Board.

10 **Committee** means the Parliamentary Joint Committee on Defence.

11 **Committee member** means a member of the Committee and  
12 includes the Chair of the Committee.

13 **decision-makers**, for a defence materiel program, means any of the  
14 following to the extent they are engaged in making decisions  
15 regarding the program:

- 16 (a) any officer or employee of the Commonwealth or an  
17 authority of the Commonwealth (including a Minister and a  
18 member of the Defence Force);  
19 (c) any committee or other body comprised of such persons,  
20 including the Cabinet or a Committee of the Cabinet.

21 **defence agency** means:

- 22 (a) the Defence Department; or  
23 (b) the Defence Force; or  
24 (c) the Defence Capability Assurance Agency; or  
25 (d) the Office of the Inspector-General of Defence Capability  
26 Assurance; or  
27 (e) any Commonwealth entity (within the meaning of the *Public  
28 Governance, Performance and Accountability Act 2013*), not  
29 mentioned in the preceding paragraphs, which is in the same  
30 portfolio as the Defence Department.

1 **Defence Capability Assurance Regulator function:** see subsection  
2 11(2).

3 **Defence Department** means the Department of State that deals  
4 with defence and that is administered by the Defence Minister.

5 **defence domains** means the following defence operational  
6 domains:

- 7 (a) information and cyber;  
8 (b) maritime;  
9 (c) air;  
10 (d) space;  
11 (e) land.

12 **defence materiel program** means a project or combination of  
13 projects engaged in by or on behalf of the Commonwealth for the  
14 acquisition and sustainment of particular materiel for the Defence  
15 Force.

16 **Defence Minister** means the Minister administering section 1 of  
17 the *Defence Act 1903*.

18 **DIO** means that part of the Defence Department known as the  
19 Defence Intelligence Organisation.

20 **Director** means the Director of the Defence Capability Assurance  
21 Agency.

22 **head** means:

- 23 (a) in relation to the Defence Department—the Secretary of the  
24 Department; or  
25 (b) in relation to the Defence Force—the Chief of the Defence  
26 Force; or  
27 (c) in relation to the Defence Capability Assurance Agency—the  
28 Director; or  
29 (d) in relation to the Office of the Inspector-General of Defence  
30 Capability Assurance—the Inspector-General; or  
31 (e) in relation to any other defence agency—the person holding,  
32 or performing the duties of, the principal office in respect of  
33 the agency.

Section 6

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1                    **Inspector-General** means the Inspector-General of Defence  
2                    Capability Assurance.

3                    **materiel** means any major equipment or system (including aircraft,  
4                    vessels, vehicles, weapons and networks) intended for use for  
5                    defence operational purposes.

6                    **monitored agency** means:

- 7                    (a) the Defence Department; or  
8                    (b) the Defence Force; or  
9                    (c) the Defence Capability Assurance Agency.

10                  **paid work** means work for financial gain or reward (whether as an  
11                  employee, a self-employed person or otherwise).

12                  **quarter** means a period of 3 months beginning on 1 January,  
13                  1 April, 1 July or 1 October.

14                  **relevant member**, in relation to a defence agency:

- 15                  (a) means a member of the staff of the defence agency, whether:  
16                          (i) an employee of the defence agency; or  
17                          (ii) a consultant or contractor to the defence agency; or  
18                          (iii) a person who is made available by another  
19                          Commonwealth or State authority or another person to  
20                          perform services for the defence agency; and  
21                  (b) for the Defence Force—includes a member of the Defence  
22                  Force; and  
23                  (c) for the Defence Capability Assurance Agency—includes a  
24                  Board member of the Defence Capability Assurance Agency.

25                  **rules** means rules made under section 106.

26                  **6 Act binds the Crown**

- 27                          (1) This Act binds the Crown in each of its capacities.  
28                          (2) However, this Act does not make the Crown liable to be prosecuted  
29                          for an offence.

1 **7 Extension to external Territories**

2 This Act extends to every external Territory.

3 **8 Extra-territorial application**

4 This Act extends to acts, omissions, matters and things outside  
5 Australia.

EXPOSURE DRAFT

1 **Part 2—Defence Capability Assurance Agency**

2 **Division 1—Introduction**

3 **9 Simplified outline of this Part**

4 There is to be a Defence Capability Assurance Agency.

5 The Agency's functions include:

- 6 (a) conducting test and evaluation and assessing risks for  
7 defence materiel programs; and  
8 (b) providing recommendations and advice on test and  
9 evaluation and risk assessments to project staff and  
10 decision-makers; and  
11 (c) developing and maintaining a competent test and  
12 evaluation workforce with relevant qualifications and  
13 experience, and fit for purpose test and evaluation  
14 infrastructure; and  
15 (d) reporting to the Defence Minister and the Parliamentary  
16 Joint Committee on Defence.

17 In addition, the Agency has a Defence Capability Assurance  
18 Regulator function, to be facilitated by an industry partner. This  
19 function is to establish, maintain and regulate appropriate standards  
20 for the test and evaluation workforce and test and evaluation  
21 infrastructure.

22 There is to be a Director and a Board of the Defence Capability  
23 Assurance Agency.

24 The Defence Capability Assurance Agency can engage staff and  
25 contractors, and other persons may assist the Agency.

26 Persons performing duties for the Defence Capability Assurance  
27 Agency must have security clearances as appropriate for their  
28 duties.

Section 9

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The Defence Capability Assurance Agency must comply with any applicable regulatory requirements of the Defence Force.

EXPOSURE DRAFT

Section 10

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1 **Division 2—Establishment and functions**

2 **10 Establishment**

3 (1) The Defence Capability Assurance Agency is established by this  
4 section.

5 (2) The Defence Capability Assurance Agency:

6 (a) is a body corporate; and

7 (b) must have a seal; and

8 (c) may acquire, hold and dispose of real and personal property;  
9 and

10 (d) may sue and be sued.

11 Note: The *Public Governance, Performance and Accountability Act 2013*  
12 applies to the Defence Capability Assurance Agency. That Act deals  
13 with matters relating to corporate Commonwealth entities, including  
14 reporting and the use and management of public resources.

15 (3) The Defence Capability Assurance Agency's seal is to be kept in  
16 such custody as the Board directs and must not be used except as  
17 authorised by the Board.

18 **11 Functions**

19 (1) The Defence Capability Assurance Agency has the following  
20 functions:

21 (a) to conduct test and evaluation for defence materiel programs;

22 (b) to assess risks associated with defence materiel programs,  
23 based on the test and evaluation it conducts, and to prepare  
24 reports in relation to those assessments;

25 (c) to provide recommendations and advice, on test and  
26 evaluation, risk assessments and any other matters relating to  
27 capability assurance, for the purposes of:

28 (i) informing each level of decision-makers for defence  
29 materiel programs; and

30 (ii) providing input for strategic programs of the Australian  
31 Government (such as the program known as the  
32 Integrated Investment Program or its equivalent)  
33 relating to investment in defence capability;



- 1 (d) the Defence Capability Assurance Regulator function (see  
2 subsection (2));
- 3 (e) for the purposes of enabling effective test and evaluation in  
4 support of defence capability acquisition and sustainment by  
5 or on behalf of the Commonwealth:
- 6 (i) to develop and maintain a workforce, comprised of  
7 Defence Force members, APS employees and  
8 contractors, with qualifications and experience in test  
9 and evaluation in accordance with the workforce  
10 standards mentioned in subsection (2);
- 11 (ii) to develop and maintain fit for purpose test and  
12 evaluation infrastructure, in accordance with the  
13 infrastructure standards mentioned in subsection (2);
- 14 (f) to report, and make recommendations, to the Committee and  
15 the Defence Minister on outcomes in relation to the above  
16 functions;
- 17 (g) to inform the Defence Department and Defence Force of  
18 outcomes in relation to the above functions;
- 19 (h) any other functions conferred on the Defence Capability  
20 Assurance Agency by this Act or any other Act;
- 21 (i) any other functions that are prescribed by rules made for the  
22 purposes of this paragraph;
- 23 (j) to do anything incidental to, or conducive to, the  
24 performance of the above functions.

25 *Defence Capability Assurance Regulator function*

- 26 (2) The **Defence Capability Assurance Regulator function** is to  
27 develop, maintain and regulate appropriate standards for the  
28 following:
- 29 (a) the workforce engaged in conducting test and evaluation and  
30 associated activities in relation to defence materiel programs;
- 31 (b) the infrastructure used to conduct test and evaluation in  
32 relation to defence materiel programs.

33 Note: An industry partner is to facilitate the performance of this function:  
34 see section 19.

Section 12

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1 *Performance of functions throughout capability life cycle*

- 2 (3) The functions of the Defence Capability Assurance Agency, as  
3 they relate to each defence materiel program, are to be performed  
4 throughout the capability life cycle for the program, from the initial  
5 setting of project requirements to the disposal of the relevant  
6 materiel.

7 *Manner of performing functions*

- 8 (4) In determining the manner in which it performs its functions in  
9 relation to a defence materiel program, including the scope and  
10 priority of test and evaluation activities associated with the  
11 program, the Defence Capability Assurance Agency must:  
12 (a) consult with one or more persons responsible for the  
13 management of the program within the Defence Department  
14 and Defence Force; and  
15 (b) have regard to the complexity and risk profile of the  
16 program; and  
17 (c) have regard to the operational imperatives affecting required  
18 capability and the program schedule.

19 **12 Powers**

- 20 (1) The Defence Capability Assurance Agency has power to do all  
21 things necessary or convenient to be done for or in connection with  
22 the performance of its functions.  
23 (2) The Defence Capability Assurance Agency's powers include, but  
24 are not limited to, the power to enter into contracts and agreements.

25 **13 Defence Capability Assurance Agency does not have privileges**  
26 **and immunities of the Crown**

27 The Defence Capability Assurance Agency does not have the  
28 privileges and immunities of the Crown in right of the  
29 Commonwealth.

1 **14 Access to information, premises and materiel**

2 The Secretary of the Defence Department and Chief of the Defence  
3 Force must each take all reasonable steps to ensure that the  
4 Defence Department and Defence Force provide the Defence  
5 Capability Assurance Agency with access to information, premises  
6 and materiel, and any other access or assistance, as necessary for  
7 the Agency to perform its functions.

8 **15 General directions**

- 9 (1) The Defence Minister may, by notifiable instrument, give  
10 directions to the Defence Capability Assurance Agency about the  
11 performance of its functions.
- 12 (2) A direction under subsection (1) must be of a general nature only.
- 13 (3) The Defence Capability Assurance Agency must comply with a  
14 direction under subsection (1).

15 **16 Providing reports and advice to project staff and decision-makers**

- 16 (1) As soon as practicable after preparing a report for a risk assessment  
17 conducted by the Defence Capability Assurance Agency in relation  
18 to a defence materiel program:  
19 (a) the Agency must give a copy of the report to:  
20 (i) the persons within the Defence Department and Defence  
21 Force who are responsible for defining capability  
22 requirements in relation to the program; and  
23 (ii) the persons within the Defence Department and Defence  
24 Force who are responsible for the day-to-day  
25 management of the program; and  
26 (b) the Agency must ensure that a copy of the report is given to  
27 decision-makers for the program within the Defence  
28 Department and the Defence Force.
- 29 (2) In performing its function under paragraph 11(1)(c) in relation to a  
30 particular defence materiel program, the Defence Capability  
31 Assurance Agency (or its representative) is to:

Section 17

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- 1 (a) attend meetings when decision-makers for the program are  
2 considering matters relating to the program that have been  
3 covered in a risk assessment report prepared by the Agency;  
4 and  
5 (b) provide any recommendations or advice relating to capability  
6 assurance at each meeting of decision-makers for the  
7 program at which matters relating to the program, that have  
8 been covered in a risk assessment report prepared by the  
9 Agency, are considered.

10 **17 Reporting to the Defence Minister and National Security**  
11 **Committee of the Cabinet**

- 12 (1) The Defence Capability Assurance Agency must, within the period  
13 of 14 days after the end of each month, prepare and give to the  
14 Defence Minister a report that sets out a summary of the risk  
15 assessments completed by the Agency during the month.
- 16 (2) The Defence Capability Assurance Agency must make copies of  
17 full reports for each risk assessment available to the Defence  
18 Minister on the Minister's request.
- 19 (3) The Secretary of the Defence Department must ensure that, if  
20 submissions to the National Security Committee of the Cabinet  
21 concern matters relating to a defence materiel program that have  
22 been covered in a risk assessment report prepared by the Defence  
23 Capability Assurance Agency, the submissions are accompanied by  
24 a copy of the full report.

25 **18 Reporting to the Committee**

- 26 The Defence Capability Assurance Agency must, within 30 days  
27 after the end of each quarter, prepare and give to the Committee a  
28 report that sets out a summary of:  
29 (a) the test and evaluation completed by the Agency during the  
30 quarter; and  
31 (b) any risks assessed during the quarter as unacceptable by the  
32 Agency, or any instances during the quarter in which the  
33 Agency has assessed that risk mitigation is highly desirable,  
34 in relation to a defence materiel program; and

- 1 (c) any recommendations or advice it has provided to the  
2 Defence Department and the Defence Force during the  
3 quarter based on those risk assessments.

4 **19 Industry partner**

- 5 (1) The Defence Capability Assurance Agency must, on behalf of the  
6 Commonwealth, enter into a written agreement with a person or  
7 entity for the person or entity to do the following, in accordance  
8 with the terms and conditions set out in the agreement:
- 9 (a) facilitate the performance of the Defence Capability  
10 Assurance Regulator function, including by maintaining,  
11 developing and regulating workforce and infrastructure  
12 standards as mentioned in subsection 11(2);
  - 13 (b) facilitate training to assist the Agency's implementation of  
14 the workforce standards mentioned in subsection 11(2);
  - 15 (c) provide specialist expertise across the defence domains to  
16 assist the Agency in the planning, and where necessary, the  
17 conduct or supervision of test and evaluation activities, as  
18 required.
- 19 (2) The Defence Capability Assurance Agency must not enter into an  
20 agreement with a person or entity under subsection (1) unless the  
21 Agency is satisfied that the person or entity is a sovereign  
22 Australian defence industry company, as determined in accordance  
23 with relevant policies of the Australian Government.
- 24 (3) The Defence Capability Assurance Agency must ensure that an  
25 agreement under this section is in effect at all times on and after  
26 the end of the period of one month beginning on the day the first  
27 appointment of a Director of the Agency is made by the Board.

Section 20

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1 **Division 3—Director of the Defence Capability Assurance**  
2 **Agency**

3 **20 Director**

4 There is to be a Director of the Defence Capability Assurance  
5 Agency.

6 **21 Functions of the Director**

7 (1) The Director is responsible for the day-to-day administration of the  
8 Defence Capability Assurance Agency.

9 (2) The Director has power to do all things necessary or convenient to  
10 be done for or in connection with the performance of the Director's  
11 duties.

12 (3) The Director is to act in accordance with policies and strategies  
13 determined by the Board.

14 (4) All acts and things done in the name of, or on behalf of, the  
15 Defence Capability Assurance Agency by the Director, or with the  
16 authority of the Director, are taken to have been done by the  
17 Defence Capability Assurance Agency.

18 (5) If a function or power of the Defence Capability Assurance  
19 Agency is dependent on the opinion, belief or state of mind of the  
20 Defence Capability Assurance Agency in relation to a matter, the  
21 function or power may be exercised upon the opinion, belief or  
22 state of mind of a person or body acting as mentioned in  
23 subsection (4) in relation to that matter.

24 **22 Director to act in accordance with directions of Board**

25 (1) The Board may give written directions to the Director, not  
26 inconsistent with any direction given to the Defence Capability  
27 Assurance Agency under section 15, about the performance of the  
28 Director's duties.

29 (2) The Director must comply with a direction under subsection (1).

- 1 (3) Subsection (2) does not apply to the extent that the direction relates  
2 to the Director's performance of functions or exercise of powers  
3 under the *Public Service Act 1999* in relation to the Defence  
4 Capability Assurance Agency.
- 5 (4) A direction under subsection (1) is not a legislative instrument.

## 6 **23 Appointment**

- 7 (1) The Director is to be appointed by the Board by written instrument,  
8 after consultation with the Defence Minister, on a full-time basis.
- 9 Note: The Director may be reappointed: see section 33AA of the *Acts*  
10 *Interpretation Act 1901*.

### 11 *Qualification for appointment*

- 12 (2) A person must not be appointed as the Director unless the Board is  
13 satisfied that the person has:
- 14 (a) appropriate qualifications and experience as both a  
15 practitioner and senior leader in an organisation conducting  
16 developmental test and evaluation, in relation to one or more  
17 domains relevant to defence; and
- 18 (b) experience in the field of engineering, or the field of  
19 operations, in relation to one or more domains relevant to  
20 defence.

### 21 *Period of appointment*

- 22 (3) The Director holds office for the period specified in the instrument  
23 of appointment. The period must not exceed 5 years.
- 24 (4) The Director must not be a Board member.

## 25 **24 Acting appointment**

- 26 The Board may, by written instrument and after consultation with  
27 the Defence Minister, appoint a person (other than a Board  
28 member) to act as the Director:
- 29 (a) during a vacancy in the office of Director (whether or not an  
30 appointment has previously been made to the office); or

## Section 25

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- 1 (b) during any period, or during all periods, when the Director:  
2 (i) is absent from duty or from Australia; or  
3 (ii) is, for any reason, unable to perform the duties of the  
4 office.

5 Note: For rules that apply to acting appointments, see sections 33AB and  
6 33A of the *Acts Interpretation Act 1901*.

## 7 **25 Terms and conditions**

8 The Director holds office on the terms and conditions (if any) in  
9 relation to matters not covered by this Act that are determined by  
10 the Board.

## 11 **26 Remuneration**

- 12 (1) The Director is to be paid the remuneration that is determined by  
13 the Remuneration Tribunal. If no determination of that  
14 remuneration by the Tribunal is in operation, the Director is to be  
15 paid the remuneration that is prescribed by the rules.
- 16 (2) The Director is to be paid the allowances that are prescribed by the  
17 rules.
- 18 (3) This section has effect subject to the *Remuneration Tribunal Act*  
19 *1973*.

## 20 **27 Leave of absence**

- 21 (1) The Director has the recreation leave entitlements that are  
22 determined by the Remuneration Tribunal.
- 23 (2) The Chair of the Board may grant the Director leave of absence,  
24 other than recreation leave, on the terms and conditions as to  
25 remuneration or otherwise that the Chair determines.
- 26 (3) The Chair of the Board must notify the Defence Minister if the  
27 Chair grants to the Director leave for a period that exceeds one  
28 month.



1 **28 Other paid work**

2 The Director must not engage in paid work outside the duties of the  
3 Director's office without the Chair of the Board's approval.

4 **29 Resignation**

- 5 (1) The Director may resign the Director's appointment by giving the  
6 Board a written resignation.
- 7 (2) The resignation takes effect on the day it is received by the Board  
8 or, if a later day is specified in the resignation, on that later day.
- 9 (3) If the Director resigns under this section, the Chair of the Board  
10 must notify the Defence Minister of the resignation.

11 **30 Termination of appointment**

- 12 (1) The Board may terminate the appointment of the Director:  
13 (a) for misbehaviour; or  
14 (b) if the Director is unable to perform the duties of the  
15 Director's office because of physical or mental incapacity.
- 16 (2) The Board may terminate the appointment of the Director if:  
17 (a) the Director:  
18 (i) becomes bankrupt; or  
19 (ii) applies to take the benefit of any law for the relief of  
20 bankrupt or insolvent debtors; or  
21 (iii) compounds with the Director's creditors; or  
22 (iv) makes an assignment of the Director's remuneration for  
23 the benefit of the Director's creditors; or  
24 (b) the Director is absent, except on leave of absence, for 14  
25 consecutive days or for 28 days in any 12 months; or  
26 (c) the Director engages, except with the Chair of the Board's  
27 approval, in paid work outside the duties of the Director's  
28 office (see section 28).

29 Note: The appointment of the Director may also be terminated under  
30 section 30 of the *Public Governance, Performance and Accountability*  
31 *Act 2013* (which deals with terminating the appointment of an

**Part 2** Defence Capability Assurance Agency

**Division 3** Director of the Defence Capability Assurance Agency

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1 accountable authority, or a member of an accountable authority, for  
2 contravening general duties of officials).

3 (3) If the Board terminates the appointment of the Director, the Board  
4 must notify the Defence Minister of the termination.

EXPOSURE DRAFT

1 **Division 4—Board of the Defence Capability Assurance**  
2 **Agency**

3 **Subdivision A—Establishment and functions of the Board**

4 **31 Establishment of the Board**

5 The Board of the Defence Capability Assurance Agency is  
6 established by this section.

7 **32 Functions of the Board**

- 8 (1) The functions of the Board are:  
9 (a) to decide, within the scope of any directions given to the  
10 Defence Capability Assurance Agency under section 15, the  
11 objectives, strategies and policies to be followed by the  
12 Agency; and  
13 (b) to ensure the proper, efficient and effective performance of  
14 the Agency's functions; and  
15 (c) any other functions conferred on the Board by this Act.  
16 (2) The Board has the power to do all things necessary or convenient  
17 to be done for or in connection with the performance of its  
18 functions.

19 **Subdivision B—Board members**

20 **33 Membership**

- 21 (1) The Board consists of the following members:  
22 (a) the Director;  
23 (b) up to 6 Board members (including the Chair of the Board and  
24 the Deputy Chair of the Board).

25 Note: As a member of the governing body, the Director is a member of the  
26 accountable authority of a Commonwealth entity for the purposes of  
27 the *Public Governance, Performance and Accountability Act 2013*:  
28 see the definition of **accountable authority** in section 12 of that Act.

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- 1 (2) The performance of a function or the exercise of a power of the  
2 Board is not affected by a vacancy in the membership of the Board.

3 **34 Appointment**

- 4 (1) Board members are to be appointed by the Defence Minister by  
5 written instrument, on a part-time basis.

6 Note: Board members may be reappointed: see section 33AA of the *Acts*  
7 *Interpretation Act 1901*.

- 8 (2) A Board member holds office for the period specified in the  
9 instrument of appointment. The period must not exceed 3 years.

- 10 (3) The Defence Minister must appoint one Board member to be the  
11 Chair of the Board and another Board member to be the Deputy  
12 Chair of the Board.

- 13 (4) A person must not be appointed as a Board member unless the  
14 Defence Minister is satisfied that the person has relevant  
15 qualifications and experience in at least one of the following fields:

- 16 (a) engineering, in relation to one or more domains relevant to  
17 defence;  
18 (b) operations, in relation to one or more domains relevant to  
19 defence;  
20 (c) corporate governance.

- 21 (5) In appointing the Board members, the Defence Minister must:

- 22 (a) to the extent practicable, ensure that the Board members are  
23 an appropriate mix of persons with qualifications and  
24 experience referred to in subsection (4); and  
25 (b) ensure that a majority of Board members have qualifications  
26 and relevant experience in the conduct and management of  
27 test and evaluation; and  
28 (c) ensure that at least one Board member has been appointed on  
29 the recommendation of the Secretary of the Defence  
30 Department and the Chief of the Defence Force, and has  
31 experience in defence operations and a strong understanding  
32 of the needs of end-users of materiel.

1 **35 Acting appointments**

2 *Acting by operation of law*

- 3 (1) The Deputy Chair of the Board is to act as the Chair of the Board:  
4 (a) during a vacancy in the office of Chair of the Board (whether  
5 or not an appointment has previously been made to the  
6 office); or  
7 (b) during any period, or during all periods, when the Chair of  
8 the Board:  
9 (i) is absent from duty; or  
10 (ii) is, for any reason, unable to perform the duties of the  
11 office.

12 Note: For rules that apply to persons acting as the Chair of the Board, see  
13 section 33A of the *Acts Interpretation Act 1901*.

14 *Acting appointments*

- 15 (2) The Defence Minister may, by written instrument, appoint a Board  
16 member to act as the Deputy Chair of the Board:  
17 (a) during a vacancy in the office of Deputy Chair of the Board  
18 (whether or not an appointment has previously been made to  
19 the office); or  
20 (b) during any period, or during all periods, when the Deputy  
21 Chair of the Board:  
22 (i) is acting as the Chair of the Board; or  
23 (ii) is absent from duty; or  
24 (iii) is, for any reason, unable to perform the duties of the  
25 office.

26 Note: For rules that apply to acting appointments, see sections 33AB and  
27 33A of the *Acts Interpretation Act 1901*.

- 28 (3) The Defence Minister may, by written instrument, appoint a person  
29 to act as a Board member (other than the Chair or Deputy Chair of  
30 the Board):  
31 (a) during a vacancy in the office of a Board member (whether  
32 or not an appointment has previously been made to the  
33 office); or

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- 1 (b) during any period, or during all periods, when a Board  
2 member:  
3 (i) is acting as the Deputy Chair of the Board; or  
4 (ii) is absent from duty; or  
5 (iii) is, for any reason, unable to perform the duties of the  
6 office.

7 Note: For rules that apply to acting appointments, see sections 33AB and  
8 33A of the *Acts Interpretation Act 1901*.

9 *Qualifications etc. of acting members*

- 10 (4) Subsection 34(4) applies to an appointment under this section in  
11 the same way as it applies to an appointment under section 34.

### 36 Terms and conditions

13 A Board member holds office on the terms and conditions (if any)  
14 in relation to matters not covered by this Act that are determined  
15 by the Defence Minister.

### 37 Remuneration

- 17 (1) A Board member is to be paid the remuneration that is determined  
18 by the Remuneration Tribunal. If no determination of that  
19 remuneration by the Tribunal is in operation, the Board member is  
20 to be paid the remuneration that is prescribed by the rules.
- 21 (2) A Board member is to be paid the allowances that are prescribed  
22 by the rules.
- 23 (3) This section has effect subject to the *Remuneration Tribunal Act*  
24 *1973*.

### 38 Leave of absence

- 26 (1) The Defence Minister may grant leave of absence to the Chair of  
27 the Board on the terms and conditions that the Defence Minister  
28 determines.

- 1 (2) The Chair of the Board may grant leave of absence to any other  
2 Board member on the terms and conditions that the Chair  
3 determines.

### 4 **39 Other paid work**

5 A Board member must not engage in any paid work that, in the  
6 Defence Minister's opinion, conflicts or could conflict with the  
7 proper performance of the member's duties.

### 8 **40 Resignation**

- 9 (1) A Board member may resign the Board member's appointment by  
10 giving the Defence Minister a written resignation.
- 11 (2) The resignation takes effect on the day it is received by the  
12 Defence Minister or, if a later day is specified in the resignation, on  
13 that later day.

### 14 **41 Termination of appointment**

- 15 (1) The Defence Minister may terminate the appointment of a Board  
16 member:  
17 (a) for misbehaviour; or  
18 (b) if the Board member is unable to perform the duties of the  
19 member's office because of physical or mental incapacity.
- 20 (2) The Defence Minister may terminate the appointment of a Board  
21 member if:  
22 (a) the Board member:  
23 (i) becomes bankrupt; or  
24 (ii) applies to take the benefit of any law for the relief of  
25 bankrupt or insolvent debtors; or  
26 (iii) compounds with the Board member's creditors; or  
27 (iv) makes an assignment of the Board member's  
28 remuneration for the benefit of the Board member's  
29 creditors; or  
30 (b) the Board member is absent, except on leave of absence,  
31 from 3 consecutive meetings of the Board; or

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- 1 (c) the Board member engages in paid work that, in the Defence  
2 Minister’s opinion, conflicts or could conflict with the proper  
3 performance of the Board member’s duties (see section 39).

4 Note: The appointment of a Board member may also be terminated under  
5 section 30 of the *Public Governance, Performance and Accountability*  
6 *Act 2013* (which deals with terminating the appointment of an  
7 accountable authority, or a member of an accountable authority, for  
8 contravening general duties of officials).

9 **Subdivision C—Meetings of the Board**

10 **42 Convening meetings**

- 11 (1) The Board must hold such meetings as are necessary for the  
12 efficient performance of its functions.
- 13 (2) The Chair of the Board:  
14 (a) may convene a meeting at any time; and  
15 (b) must convene at least 4 meetings each calendar year; and  
16 (c) must convene a meeting within 30 days after receiving a  
17 written request to do so from another Board member.

18 **43 Presiding at meetings**

- 19 (1) The Chair of the Board must preside at all meetings at which the  
20 Chair is present.
- 21 (2) If the Chair of the Board is not present at a meeting, the Deputy  
22 Chair of the Board presides.
- 23 (3) If neither the Chair of the Board nor the Deputy Chair of the Board  
24 is present at a meeting, the Board members present must appoint  
25 one of themselves to preside.

26 **44 Quorum**

- 27 (1) At a meeting of the Board, a quorum is constituted by a majority of  
28 Board members.
- 29 (2) However, if:



- 1 (a) a Board member is required by rules made for the purposes  
2 of section 29 of the *Public Governance, Performance and*  
3 *Accountability Act 2013* not to be present during the  
4 deliberations, or to take part in any decision, of the Board  
5 with respect to a particular matter; and  
6 (b) when the Board member leaves the meeting concerned there  
7 is no longer a quorum present;  
8 the remaining Board members at the meeting constitute a quorum  
9 for the purpose of any deliberation or decision at that meeting with  
10 respect to that matter.
- 11 (3) For the purposes of this section, **Board member** includes the  
12 Director.

#### 13 **45 Voting at meetings**

- 14 (1) A question arising at a meeting of the Board is to be determined by  
15 a majority of the votes of the Board members present and voting.
- 16 (2) The person presiding at a meeting of the Board has a deliberative  
17 vote and, if the votes are equal, a casting vote.
- 18 (3) For the purposes of this section, **Board member** includes the  
19 Director.

#### 20 **46 Conduct of meetings**

21 The Board may, subject to this Division, regulate proceedings at its  
22 meetings as it considers appropriate.

23 Note: Section 33B of the *Acts Interpretation Act 1901* contains further  
24 information about the ways in which Board members may participate  
25 in meetings.

#### 26 **47 Minutes**

27 The Board must keep minutes of its meetings.

#### 28 **48 Decisions without meetings**

- 29 (1) The Board is taken to have made a decision at a meeting if:
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- 1 (a) without meeting, a majority of the Board members entitled to  
2 vote on the proposed decision indicate agreement with the  
3 decision; and  
4 (b) that agreement is indicated in accordance with the method  
5 determined by the Board under subsection (2); and  
6 (c) all the Board members were informed of the proposed  
7 decision, or reasonable efforts were made to inform all the  
8 Board members of the proposed decision.
- 9 (2) Subsection (1) applies only if the Board:  
10 (a) has determined that it may make decisions of that kind  
11 without meeting; and  
12 (b) has determined the method by which Board members are to  
13 indicate agreement with proposed decisions.
- 14 (3) For the purposes of paragraph (1)(a), a Board member is not  
15 entitled to vote on a proposed decision if the Board member would  
16 not have been entitled to vote on that proposal if the matter had  
17 been considered at a meeting of the Board.
- 18 (4) The Board must keep a record of decisions made in accordance  
19 with this section.
- 20 (5) For the purposes of this section, **Board member** includes the  
21 Director.

1 **Division 5—Staff, contractors and other persons assisting**

2 **49 Permanent staff**

3 (1) The staff of the Defence Capability Assurance Agency must be  
4 persons:

- 5 (a) who are engaged under the *Public Service Act 1999*; or  
6 (b) who are members of the Defence Force posted to the Defence  
7 Capability Assurance Agency.

8 (2) For the purposes of the *Public Service Act 1999*:

- 9 (a) the Director and the staff referred to in paragraph (1)(a)  
10 together constitute a Statutory Agency; and  
11 (b) the Director is the Head of that Statutory Agency.

12 **50 Contractors**

13 The Defence Capability Assurance Agency may engage persons  
14 under a written agreement to assist the Agency to perform or  
15 exercise the functions or powers of the Agency.

16 **51 Other persons assisting the Defence Capability Assurance Agency**  
17 **on a shorter-term basis**

18 In addition to the persons mentioned in sections 49 and 50, the  
19 Defence Capability Assurance Agency may be assisted by the  
20 following in the performance or exercise of its functions or powers:

- 21 (a) persons engaged under the *Public Service Act 1999* and made  
22 available by the Secretary of the Defence Department;  
23 (b) other members of the Defence Force whose services are  
24 made available for the purpose under an arrangement  
25 between the Chief of the Defence Force and the Defence  
26 Capability Assurance Agency;  
27 (c) persons engaged as a contractor to perform services for the  
28 Defence Department or Defence Force, and whose services  
29 are made available for the purpose under an arrangement  
30 between the Secretary of the Department, or the Chief of the  
31 Defence Force, and the Defence Capability Assurance  
32 Agency.
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1 **Division 6—Other matters**

2 **52 Requirement to be cleared for security purposes**

3 If a person performing duties for the Defence Capability Assurance  
4 Agency is to deal with security classified information in that  
5 capacity, the person must be cleared for security purposes to a level  
6 that is appropriate having regard to the person's duties.

7 **53 Defence Capability Assurance Agency must comply with defence  
8 regulatory framework**

9 To the extent that the performance of the Defence Capability  
10 Assurance Agency's functions involve the operation or use of  
11 materiel, the Agency must ensure that it (and any person or entity  
12 assisting or engaged by it) complies with any applicable regulatory  
13 requirements of the Defence Force.

14 **54 Delegation by Director**

- 15 (1) The Director may, in writing, delegate all or any of the Director's  
16 functions or powers under this Act to:
- 17 (a) a member of the staff referred to in section 49 who is an SES  
18 employee, or acting SES employee; or
  - 19 (b) a member of the staff referred to in section 49 who is a  
20 member of the Defence Force holding a rank not lower than:
    - 21 (i) in the case of the Royal Australian Navy—the rank of  
22 Commodore; or
    - 23 (ii) in the case of the Australian Army—the rank of  
24 Brigadier; or
    - 25 (iii) in the case of the Royal Australian Air Force—the rank  
26 of Air Commodore.

27 Note 1: *SES employee* and *acting SES employee* are defined in section 2B of  
28 the *Acts Interpretation Act 1901*.

29 Note 2: Sections 34AA to 34A of the *Acts Interpretation Act 1901* contain  
30 provisions relating to delegations.

- 1                   (2) In performing a delegated function or exercising a delegated  
2                   power, the delegate must comply with any written directions of the  
3                   Director.

EXPOSURE DRAFT

1 **Part 3—Inspector-General of Defence Capability**  
2 **Assurance**

3 **Division 1—Introduction**

4 **55 Simplified outline of this Part**

5 There is to be an Inspector-General of Defence Capability  
6 Assurance.

7 The Inspector-General's functions include inquiring at the request  
8 of the Defence Minister or on the Inspector-General's own  
9 initiative into:

- 10 (a) the Defence Department's and the Defence Force's  
11 engagement with the Defence Capability Assurance  
12 Agency, including responses to risks identified by the  
13 Agency; and  
14 (b) the Defence Department's funding of the Defence  
15 Capability Assurance Agency; and  
16 (c) particular defence materiel programs.

17 The Inspector-General can engage staff. The staff must have  
18 appropriate security clearances.

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## 1 **Division 2—Establishment and functions**

### 2 **56 Inspector-General**

- 3 (1) There is to be an Inspector-General of Defence Capability  
4 Assurance.
- 5 (2) For the purposes of the finance law (within the meaning of  
6 the *Public Governance, Performance and Accountability Act*  
7 *2013*):
- 8 (a) the following group of persons is a listed entity:
    - 9 (i) the Inspector-General;
    - 10 (ii) the staff assisting the Inspector-General referred to in  
11 section 71;
  - 12 (b) the listed entity is to be known as the Office of the  
13 Inspector-General of Defence Capability Assurance; and
  - 14 (c) the Inspector-General is the accountable authority of the  
15 listed entity; and
  - 16 (d) the persons referred to in paragraph (a) are officials of the  
17 listed entity; and
  - 18 (e) the purposes of the listed entity include the functions of the  
19 Inspector-General referred to in section 57.

#### 20 *Limitation on appointment of Inspector-General*

- 21 (3) A person must not be appointed as Inspector-General if the person  
22 is, or the person's most recent position was, any of the following:
- 23 (a) the Secretary of the Defence Department;
  - 24 (b) an SES Band 3 position, or an equivalent or higher position,  
25 in the Defence Department;
  - 26 (c) an SES Band 2 position, or equivalent, in the Defence  
27 Department in a role that is primarily responsible for  
28 capability acquisition and sustainment;
  - 29 (d) the Chief of the Defence Force;
  - 30 (e) the Vice Chief of the Defence Force;
  - 31 (f) an officer of the Royal Australian Navy who holds the rank  
32 of Vice-Admiral or a higher rank;

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- 1 (g) an officer of the Australian Army who holds the rank of  
2 Lieutenant-General or a higher rank;  
3 (h) an officer of the Royal Australian Air Force who holds the  
4 rank of Air Marshal or a higher rank.

5 **57 Functions of the Inspector-General**

6 The Inspector-General has the following functions:

- 7 (a) at the request of the Defence Minister or on the  
8 Inspector-General's own initiative, to inquire into any matter  
9 that relates to whether the Defence Department and Defence  
10 Force have done the following:
- 11 (i) engaged with the Defence Capability Assurance Agency  
12 in a timely manner as part of each update of any  
13 strategic programs mentioned in subparagraph  
14 11(1)(c)(ii), and at the commencement of each defence  
15 materiel program or project forming part of such a  
16 program;
  - 17 (ii) incorporated the Defence Capability Assurance  
18 Agency's risk assessments into those strategic programs  
19 and project planning, management and outcomes;
  - 20 (iii) transparently ensured the Defence Capability Assurance  
21 Agency's risk assessments are reported to each level of  
22 decision-makers across the capability life cycle relating  
23 to a particular defence materiel program;
  - 24 (iv) documented actions taken to mitigate risks identified by  
25 the Defence Capability Assurance Agency, or  
26 documented the justification for not accepting the  
27 Agency's recommendations;
  - 28 (v) given the Defence Capability Assurance Agency an  
29 opportunity to provide advice on the probable  
30 consequences of such actions or justifications in  
31 response to the risks the Agency has identified;
- 32 (b) at the request of the Defence Minister or on the  
33 Inspector-General's own initiative, to inquire into any matter  
34 relating to whether the Defence Department and Defence  
35 Force have provided the Defence Capability Assurance  
36 Agency sufficient funding to perform its functions:



- 1 (i) whether via a given project or via an agreement to  
2 maintain a minimum level of capability for the Defence  
3 Capability Assurance Agency; and  
4 (ii) taking into account the scope of work for test and  
5 evaluation that has been determined in consultation with  
6 the Defence Department and Defence Force;
- 7 (c) without limiting paragraph (a)—at the request of the Defence  
8 Minister or on the Inspector-General’s own initiative, to  
9 conduct inquiries into particular defence materiel programs  
10 (whether the relevant program began or ended before or after  
11 the commencement of this section);
- 12 (d) any other functions conferred on the Inspector-General by  
13 this Act or any other Act;
- 14 (e) any other functions that are prescribed by rules made for the  
15 purposes of this paragraph;
- 16 (f) to report, and make recommendations, to the Defence  
17 Minister and the Committee on outcomes in relation to any of  
18 the above functions;
- 19 (g) to inform the Defence Department and Defence Force of  
20 outcomes in relation to the above functions;
- 21 (h) to do anything incidental to, or conducive to, the  
22 performance of the above functions.

1 **Division 3—Inquiries**

2 **58 Conduct of inquiries**

3 (1) An inquiry by the Inspector-General must be conducted in private  
4 and, subject to this Division, in such manner as the  
5 Inspector-General thinks fit.

6 (2) The Inspector-General may, for the purposes of this Act, obtain  
7 information from such persons, and make such inquiries, as the  
8 Inspector-General thinks fit.

9 (3) Subject to subsections (4) and (5), it is not necessary for a person  
10 to be afforded an opportunity to appear before the  
11 Inspector-General or before any other person in connection with an  
12 inquiry by the Inspector-General under this Act.

13 (4) The Inspector-General must not make a report in relation to an  
14 inquiry conducted under this Act in which the Inspector-General  
15 sets out opinions that are, either expressly or impliedly, critical of a  
16 monitored agency unless the Inspector-General has, before  
17 completing the inquiry, given the head of the agency a reasonable  
18 opportunity to appear before the Inspector-General and to make,  
19 either orally or in writing, submissions in relation to the matters  
20 that are the subject of the inquiry.

21 (5) If the Inspector-General proposes to set out in a report in relation to  
22 an inquiry conducted under this Act opinions that are, either  
23 expressly or impliedly, critical of a person, the Inspector-General  
24 must, unless doing so would, in the opinion of the  
25 Inspector-General, prejudice security, the defence of Australia or  
26 Australia's relations with other countries, give the person a  
27 reasonable opportunity to appear before the Inspector-General and  
28 to make, either orally or in writing, submissions in relation to the  
29 matters that are the subject of the inquiry.

30 (6) If the Inspector-General gives, under subsection (4) or (5), the head  
31 of a monitored agency or another person an opportunity to appear  
32 before the Inspector-General, the person may, with the approval of  
33 the Inspector-General, be represented by another person.

- 1 (7) The Inspector-General may, at any time before completing an  
2 inquiry under this Act into a matter relating to a monitored agency,  
3 if it is appropriate to do so, consult with the Defence Minister on  
4 any matter that is relevant to the inquiry.
- 5 (8) If the Inspector-General forms the opinion that there is evidence  
6 that a person who is a member of a monitored agency has been  
7 guilty of a breach of duty or of misconduct and that the evidence is  
8 of sufficient weight to justify the Inspector-General doing so, the  
9 Inspector-General must bring the evidence to the notice of:
- 10 (a) in a case where the person is a head of a defence agency—the  
11 Defence Minister; or  
12 (b) in any other case—the head of that agency.

### 13 **59 Power to obtain information and documents**

- 14 (1) If the Inspector-General has reason to believe that a person is  
15 capable of giving information or producing documents relevant to  
16 a matter that is being inquired into by the Inspector-General under  
17 this Act, the Inspector-General may, by notice in writing given to  
18 the person, require the person, at such reasonable place and within  
19 such reasonable period as are specified in the notice:
- 20 (a) to give to the Inspector-General, by writing signed by that  
21 person or, in the case of a body corporate, on behalf of the  
22 body corporate, any such information; or  
23 (b) to produce to the Inspector-General any such documents.
- 24 (2) If documents are produced to the Inspector-General in accordance  
25 with a requirement under subsection (1), the Inspector-General:
- 26 (a) may take possession of, and may make copies of or take  
27 extracts from, the documents; and  
28 (b) may retain possession of the documents for such period as is  
29 necessary for the purposes of the inquiry to which the  
30 documents relate; and  
31 (c) during that period must permit a person who would be  
32 entitled to inspect any one or more of the documents if they  
33 were not in the possession of the Inspector-General to inspect  
34 at all reasonable times such of the documents as the person  
35 would be so entitled to inspect.

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- 1 (3) If the Inspector-General has reason to believe that a person is able  
2 to give information relevant to a matter that is being inquired into  
3 by the Inspector-General under this Act, the Inspector-General  
4 may, by notice in writing given to the person, require the person to  
5 attend before the Inspector-General, at such reasonable time and  
6 place as are specified in the notice, to answer questions relevant to  
7 the matter under inquiry.
- 8 (4) The Inspector-General may administer an oath or affirmation to a  
9 person required to attend before the Inspector-General under  
10 subsection (3) and may examine the person on oath or affirmation.
- 11 (5) The oath or affirmation to be taken or made by a person for the  
12 purposes of this section is an oath or affirmation that the evidence  
13 the person will give will be true.
- 14 (6) A person commits an offence if the person:  
15 (a) fails to be sworn or to make an affirmation or to give  
16 information or produce a document when required to do so  
17 under this section; or  
18 (b) after being given a notice under subsection (3), fails to  
19 comply with the notice or to answer a question that the  
20 Inspector-General requires the person to answer.
- 21 Penalty:  
22 (a) for an individual—10 penalty units or imprisonment for 6  
23 months, or both; or  
24 (d) for a body corporate—50 penalty units.
- 25 (7) Subsection (6) does not apply if the person has a reasonable  
26 excuse.
- 27 Note: A defendant bears an evidential burden in relation to the matter in  
28 subsection (7) (see subsection 13.3(3) of the *Criminal Code*).
- 29 (8) A person is not liable to any penalty under the provisions of any  
30 law of the Commonwealth or of a Territory by reason only of the  
31 person having given information, produced a document or  
32 answered a question when required to do so under this section.

1 **60 Entry to premises occupied by a monitored agency**

2 The Inspector-General may, after notifying the head of a monitored  
3 agency, at any reasonable time, enter any place occupied by the  
4 agency for the purposes of an inquiry under this Act.

5 **61 Security of monitored agency documents**

6 If:

- 7 (a) the Inspector-General requires access to documents in the  
8 possession of a monitored agency for the purposes of an  
9 inquiry by the Inspector-General under this Act; and  
10 (b) those documents have a national security or other protective  
11 security classification, or the head of the monitored agency is  
12 satisfied that they are commercial-in-confidence;

13 the Inspector-General must, if the Inspector-General intends to  
14 remove those documents from the possession of the agency, make  
15 arrangements with the head of the agency for the protection of  
16 those documents while they remain in the Inspector-General's  
17 possession and for the return of those documents.

18 **62 Reporting of inquiry findings by the Inspector-General**

19 (1) For each inquiry conducted by the Inspector-General under this  
20 Act, the Inspector-General must give a copy of the report made in  
21 relation to the inquiry to each monitored agency as soon as  
22 practicable after completing the inquiry.

- 23 (2) If the Inspector-General makes a report in relation to an inquiry  
24 under this Act that sets out opinions that are:  
25 (a) either expressly or impliedly, critical of a monitored agency;  
26 or  
27 (b) otherwise indicate that the Defence Department or Defence  
28 Force (or both) have not adequately engaged with the  
29 Defence Capability Assurance Agency in the performance of  
30 its functions, or responded to risks identified by the Agency  
31 in a sufficiently transparent way;

32 the Inspector-General must give a copy of the report to the Defence  
33 Minister as soon as practicable.

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- 1                   (3) The Inspector-General must give the Defence Minister periodic  
2                   summaries of inquiry reports not covered by subsection (2), in a  
3                   manner the Inspector-General considers appropriate for the  
4                   purposes of informing the Minister of its inquiry activities.
- 5                   (4) The Inspector-General must, within the period of one month after  
6                   the end of each calendar year, give the Committee a report on the  
7                   outcomes of inquiries completed by the Inspector-General under  
8                   this Act during the year.

EXPOSURE DRAFT

1 **Division 4—Administrative provisions relating to the**  
2 **Inspector-General**

3 **63 Appointment of the Inspector-General**

- 4 (1) The Inspector-General of Defence Capability Assurance is to be  
5 appointed by the Governor-General by written instrument, on a  
6 full-time or part-time basis.
- 7 (2) A person is not eligible to be appointed to the office of  
8 Inspector-General more than twice.
- 9 (3) Before the Prime Minister makes a recommendation to the  
10 Governor-General for the appointment of a person as  
11 Inspector-General, the Prime Minister must consult with the  
12 Leader of the Opposition in the House of Representatives.
- 13 (4) The Inspector-General holds office for the period specified in the  
14 instrument of appointment. The period must not exceed 5 years.

15 **64 Acting appointments**

- 16 (1) The Defence Minister may, by written instrument, appoint a person  
17 to act as the Inspector-General:  
18 (a) during a vacancy in the office of Inspector-General (whether  
19 or not an appointment has previously been made to the  
20 office); or  
21 (b) during any period, or during all periods, when the  
22 Inspector-General:  
23 (i) is absent from duty or from Australia; or  
24 (ii) is, for any reason, unable to perform the duties of the  
25 office.

26 Note: For rules that apply to acting appointments, see sections 33AB  
27 and 33A of the *Acts Interpretation Act 1901*.

- 28 (2) Before the Defence Minister appoints a person to act as the  
29 Inspector-General, the Prime Minister must consult with the  
30 Leader of the Opposition in the House of Representatives about the  
31 appointment.

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1       **65 Remuneration**

- 2           (1) The Inspector-General is to be paid the remuneration that is  
3           determined by the Remuneration Tribunal. If no determination of  
4           that remuneration by the Tribunal is in operation, the  
5           Inspector-General is to be paid the remuneration that is prescribed  
6           by the rules.
- 7           (2) The Inspector-General is to be paid the allowances that are  
8           prescribed by the rules.
- 9           (3) This section has effect subject to the *Remuneration Tribunal Act*  
10          1973.

11       **66 Leave of absence**

- 12          (1) If the Inspector-General is appointed on a full-time basis, the  
13          Inspector-General has the recreation leave entitlements that are  
14          determined by the Remuneration Tribunal.
- 15          (2) If the Inspector-General is appointed on a full-time basis, the  
16          Defence Minister may grant the Inspector-General leave of  
17          absence, other than recreation leave, on the terms and conditions as  
18          to remuneration or otherwise that the Defence Minister determines.
- 19          (3) If the Inspector-General is appointed on a part-time basis, the  
20          Defence Minister may grant leave of absence to the  
21          Inspector-General on the terms and conditions that the Defence  
22          Minister determines.

23       **67 Other paid work**

- 24          (1) If the Inspector-General is appointed on a full-time basis, the  
25          Inspector-General must not engage in paid work outside the duties  
26          of the Inspector-General's office without the Defence Minister's  
27          approval.
- 28          (2) If the Inspector-General is appointed on a part-time basis, the  
29          Inspector-General must not engage in any paid work that, in the  
30          Defence Minister's opinion, conflicts or could conflict with the  
31          proper performance of the Inspector-General's duties.



1 **68 Other terms and conditions**

2 The Inspector-General holds office on the terms and conditions (if  
3 any) in relation to matters not covered by this Act that are  
4 determined by the Defence Minister.

5 **69 Resignation**

- 6 (1) The Inspector-General may resign the Inspector-General's  
7 appointment by giving the Governor-General a written resignation.
- 8 (2) The resignation takes effect on the day it is received by the  
9 Governor-General or, if a later day is specified in the resignation,  
10 on that later day.

11 **70 Termination of appointment**

- 12 (1) The Governor-General may terminate the appointment of the  
13 Inspector-General:  
14 (a) for misbehaviour; or  
15 (b) if the Inspector-General is unable to perform the duties of the  
16 Inspector-General's office because of physical or mental  
17 incapacity.
- 18 (2) The Governor-General may terminate the appointment of the  
19 Inspector-General if:  
20 (a) the Inspector-General:  
21 (i) becomes bankrupt; or  
22 (ii) applies to take the benefit of any law for the relief of  
23 bankrupt or insolvent debtors; or  
24 (iii) compounds with the Inspector-General's creditors; or  
25 (iv) makes an assignment of the Inspector-General's  
26 remuneration for the benefit of the Inspector-General's  
27 creditors; or  
28 (b) if the Inspector-General is appointed on a full-time basis—  
29 the Inspector-General is absent from duty, except on leave of  
30 absence, for 14 consecutive days or for 28 days in any period  
31 of 12 months; or

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- 1 (c) if the Inspector-General is appointed on a part-time basis—  
2 the Inspector-General is absent from duty, except on leave of  
3 absence, for 7 consecutive days or for 14 days in any period  
4 of 12 months; or  
5 (d) if the Inspector-General is appointed on a full-time basis—  
6 the Inspector-General engages, except with the Defence  
7 Minister’s approval, in paid work outside the duties of the  
8 Inspector-General’s office (see subsection 67(1)); or  
9 (e) if the Inspector-General is appointed on a part-time basis—  
10 the Inspector-General engages in paid work that, in the  
11 Defence Minister’s opinion, conflicts or could conflict with  
12 the proper performance of the Inspector-General’s duties (see  
13 subsection 67(2)).

14 Note: The appointment of an Inspector-General may also be terminated  
15 under section 30 of the *Public Governance, Performance and*  
16 *Accountability Act 2013* (which deals with terminating the  
17 appointment of an accountable authority, or a member of an  
18 accountable authority, for contravening general duties of officials).

1 **Division 5—Staff**

2 **71 Staff**

- 3 (1) The staff necessary to assist the Inspector-General are to be  
4 persons who are engaged under the *Public Service Act 1999*.
- 5 (2) For the purposes of the Public Service Act 1999:  
6 (a) the Inspector-General and the APS employees assisting the  
7 Inspector-General together constitute a Statutory Agency;  
8 and  
9 (b) the Inspector-General is the Head of that Statutory Agency.

10 **72 Staff must be cleared for security purposes**

11 Each member of the staff assisting the Inspector-General under  
12 section 71 must be cleared for security purposes to a level that is  
13 appropriate having regard to the information that the member of  
14 staff will deal with in that capacity.

1 **Part 4—Parliamentary Joint Committee on**  
2 **Defence**

3 **Division 1—Introduction**

4 **73 Simplified outline of this Part**

5 There is to be a Parliamentary Joint Committee on Defence.

6 The Committee's functions include:

- 7 (a) reviewing the administration and expenditure of certain  
8 defence agencies; and  
9 (b) monitoring and reviewing the performance of the  
10 Defence Capability Assurance Agency and the  
11 Inspector-General; and  
12 (c) reviewing matters relating to the defence of Australia or  
13 defence agencies; and  
14 (d) reviewing defence operations; and  
15 (e) reporting the Committee's recommendations to the  
16 Parliament and the Defence Minister.

17 The Committee may appoint one or more subcommittees to inquire  
18 into and report to the Committee upon such matters as the  
19 Committee directs.

1 **Division 2—Establishment and functions of Parliamentary**  
2 **Joint Committee on Defence**

3 **74 Parliamentary Joint Committee on Defence**

- 4 (1) A Committee to be known as the Parliamentary Joint Committee  
5 on Defence is to be established after:  
6 (a) the commencement of this section; and  
7 (b) the commencement of the first session of each Parliament  
8 after the commencement of this section.
- 9 (2) The Committee is to consist of 11 members, 5 of whom must be  
10 Senators and 6 of whom must be members of the House of  
11 Representatives.
- 12 (3) A majority of the Committee's members must be Government  
13 members.

14 **75 Functions of the Committee**

- 15 (1) The Committee has the following functions:  
16 (a) to review the administration and expenditure of defence  
17 agencies, including annual reports prepared in relation to  
18 defence agencies under section 46 of the *Public Governance,*  
19 *Performance and Accountability Act 2013*;  
20 (b) without limiting paragraph (a):  
21 (i) to monitor and to review the performance by the  
22 Defence Capability Assurance Agency of its functions;  
23 and  
24 (ii) to monitor and to review the performance by the  
25 Inspector-General of its functions; and  
26 (iii) to report to both Houses of the Parliament, with such  
27 comments as it thinks fit, on any matter connected with  
28 the performance of the functions of the Defence  
29 Capability Assurance Agency or the Inspector-General  
30 that the Committee considers should be directed to the  
31 attention of the Parliament;

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- 1 (c) to review any matter in relation to the defence of Australia or  
2 a defence agency referred to the Committee by:  
3 (i) the Defence Minister; or  
4 (ii) a resolution of either House of the Parliament;  
5 (d) to review Defence Force operations, including strategic  
6 assessments and decision-making processes behind those  
7 operations;  
8 (e) to review Defence Department and Defence Force capability  
9 acquisition processes, including strategic assessments and  
10 decision-making processes behind those acquisitions;  
11 (f) to report the Committee's comments and recommendations  
12 to each House of the Parliament and to the Defence Minister;  
13 (g) to do anything incidental to, or conducive to, the  
14 performance of the above functions.

15 (2) Paragraph (1)(a) does not apply in relation to AGO, ASD or DIO.

16 Note: The Parliamentary Joint Committee on Intelligence and Security has a  
17 function of reviewing the administration and expenditure of AGO,  
18 ASD and DIO under paragraph 29(1)(a) of the *Intelligence Services*  
19 *Act 2001*.

20 **76 Persons to brief the Committee**

21 For the purpose of performing its functions, the Committee may  
22 request the head, or any relevant member, of a defence agency to  
23 brief the Committee.

24 **77 Annual report**

25 As soon as practicable after each year ending on 30 June, the  
26 Committee must give to the Parliament a report on the activities of  
27 the Committee during the year.

1 **Division 3—Procedure**

2 **78 Power to obtain information and documents (other than from**  
3 **defence agencies)**

- 4 (1) The Chair of the Committee or another Committee member  
5 authorised by the Committee may give a person written notice  
6 requiring the person to appear before the Committee to give  
7 evidence or to produce documents to the Committee.
- 8 (2) The notice must specify the day on which, and the time and place  
9 at which, the person is required to appear or to produce documents.  
10 The day must not be less than 5 days after the day on which the  
11 notice is given to the person.
- 12 (3) The notice must also specify the nature of the evidence or  
13 documents to be provided to the Committee, and in the case of  
14 documents, the form in which they are to be provided.
- 15 (4) A requirement under this section must not be made of:  
16 (a) the head of a defence agency; or  
17 (b) a relevant member of a defence agency.
- 18 (5) A requirement under this section may only be made of a person if  
19 the Committee has reasonable grounds for believing that the person  
20 is capable of giving evidence or producing documents relevant to a  
21 matter that the Committee is reviewing or that has been referred to  
22 the Committee.
- 23 (6) The Commonwealth must pay a person who has been given a  
24 notice requiring the person to appear before the Committee such  
25 allowances for the person's travelling and other expenses as are  
26 prescribed by the rules.

27 **79 Provision of information to Committee by defence agencies**

- 28 (1) The Chair of the Committee or another Committee member  
29 authorised by the Committee may give a written notice to the head  
30 of a defence agency, requiring the head to appear before the

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- 1 Committee to give evidence or to produce documents to the  
2 Committee.
- 3 (2) The notice must specify the day on which, and the time and place  
4 at which, the head is required to appear or to produce documents.  
5 The day must not be less than 5 days after the day on which the  
6 notice is given to the head.
- 7 (3) The notice must also specify the nature of the evidence or  
8 documents to be provided to the Committee, and in the case of  
9 documents, the form in which they are to be provided.
- 10 (4) A requirement under this section may only be made of the person if  
11 the Committee has reasonable grounds for believing that the person  
12 is capable of giving evidence or producing documents relevant to a  
13 matter that has been referred to the Committee.
- 14 (5) The evidence is to be given by:  
15 (a) if the head nominates a relevant member of the agency to  
16 give the evidence—the relevant member or both the relevant  
17 member and the head; or  
18 (b) in any other case—the head.

19 **80 Certificates by Defence Minister**

- 20 (1) If:  
21 (a) a person is about to give or is giving evidence to the  
22 Committee or is about to produce a document to the  
23 Committee (whether or not required to do so under section 78  
24 or 79); and  
25 (b) the Defence Minister is of the opinion that, to prevent the  
26 disclosure of operationally sensitive information or  
27 information that would prejudice Australia's national security  
28 or the conduct of Australia's foreign relations:  
29 (i) the person (not being a defence agency head) should not  
30 give evidence before the Committee; or  
31 (ii) the person should not give evidence before the  
32 Committee relating to a particular matter; or  
33 (iii) in a case where a person has commenced to give  
34 evidence before the Committee:



- 1 (A) the person should not continue to give evidence  
2 before the Committee; or
- 3 (B) the person should not give, or continue to give,  
4 evidence relating to a particular matter before  
5 the Committee; or
- 6 (iv) the person should not produce documents to the  
7 Committee; or
- 8 (v) the person should not produce documents of a particular  
9 kind to the Committee;
- 10 the Defence Minister may give to the presiding member of the  
11 Committee a certificate in relation to the matter stating the  
12 Minister's opinion.
- 13 (2) The Defence Minister's certificate must also specify:
- 14 (a) in a case to which subparagraph (1)(b)(ii) or (v) applies—the  
15 matter in relation to which the Minister is satisfied that the  
16 person should not give, or continue to give, evidence, or  
17 specifying the kind of documents that the Minister is satisfied  
18 the person should not produce, as the case requires; and
- 19 (b) in a case to which sub-subparagraph (1)(b)(iii)(B) applies—  
20 the matter in relation to which the Minister is satisfied that  
21 the person should not give, or continue to give, evidence; and
- 22 (c) in any case—the day the certificate ceases to have effect,  
23 which must be within the period of 6 months starting on the  
24 day it is given to the presiding officer of the Committee.
- 25 (3) The certificate ceases to have effect on the day specified in the  
26 certificate for the purposes of paragraph (2)(c).
- 27 (4) The Defence Minister must give a copy of a certificate under  
28 subsection (1) to the President of the Senate, to the Speaker of the  
29 House of Representatives and to the person required to give  
30 evidence or produce documents.
- 31 (5) A decision of the Defence Minister under subsection (1) must not  
32 be questioned in any court or tribunal.
- 33 (6) Where the Defence Minister gives a certificate under  
34 subsection (1) in relation to a person and that certificate is in effect:

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- 1 (a) if the certificate states that the person should not give, or  
2 continue to give, evidence before the Committee—the  
3 Committee must not receive, or continue to receive, as the  
4 case may be, evidence from the person; or  
5 (b) if the certificate states that the person should not give, or  
6 continue to give, evidence before the Committee relating to a  
7 particular matter—the Committee must not receive, or  
8 continue to receive, as the case may be, evidence from the  
9 person relating to that matter; or  
10 (c) if the certificate states that the person should not produce  
11 documents, or documents of a particular kind, to the  
12 Committee—the Committee must not receive documents, or  
13 documents of that kind, as the case may be, from the person.

14 **81 Evidence**

- 15 (1) The Committee may take evidence on oath or affirmation.  
16 (2) The Committee member presiding may administer an oath or  
17 affirmation to a witness appearing before the Committee.  
18 (3) The oath or affirmation is an oath or affirmation that the evidence  
19 the person will give will be true.  
20 (4) To avoid doubt, the Committee is not to be taken to be an  
21 Australian court for the purposes of the *Evidence Act 1995*.

22 **82 Publication of evidence or contents of documents**

- 23 (1) Subject to this section, the Committee may disclose or publish, or  
24 authorise the disclosure or publication of:  
25 (a) any evidence taken by the Committee; or  
26 (b) the contents of any document produced to the Committee.  
27 (2) If the evidence is taken, or the document is produced, in a review  
28 conducted in private, the Committee must not disclose or publish,  
29 or authorise the disclosure or publication of the evidence or the  
30 contents of the document without the written authority of:

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- 1 (a) if the person who gave the evidence or produced the  
2 document is a relevant member of a defence agency—the  
3 head of the agency; or  
4 (b) in any other case—the person who gave the evidence or  
5 produced the document.
- 6 (3) Subsection (2) does not apply:  
7 (a) if the evidence, or the contents of the document, have already  
8 been lawfully disclosed or published; or  
9 (b) in relation to a matter of which the Committee has become  
10 aware otherwise than because of the giving of any evidence  
11 before, or the production of any document to, the Committee.
- 12 (4) The Committee must not disclose or publish, or authorise the  
13 disclosure or publication of, the evidence, or the contents of the  
14 document, if the disclosure or publication would disclose a matter  
15 that the Committee is not, under section 83, permitted to disclose  
16 in a report to a House of the Parliament.
- 17 (5) The Committee may obtain the advice of the Defence Minister as  
18 to whether the disclosure or publication might disclose a matter of  
19 that kind.
- 20 (6) This section has effect despite section 2 of the *Parliamentary*  
21 *Papers Act 1908*.
- 22 (7) If the evidence, or the contents of the document, are disclosed or  
23 published under this section, section 4 of the *Parliamentary Papers*  
24 *Act 1908* applies to the disclosure or publication as if it were a  
25 publication under an authority given under section 2 of that Act.

26 **83 Restrictions on disclosure to Parliament**

- 27 (1) The Committee must not disclose in a report to a House of the  
28 Parliament:  
29 (a) the identity of a person who is covered by a determination  
30 made under subsection (2); or  
31 (b) any information from which the identity of a person who is  
32 covered by a determination made under subsection (2) could  
33 reasonably be inferred; or

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- 1 (c) operationally sensitive information or information that would  
2 or might prejudice:  
3 (i) Australia's national security or the conduct of  
4 Australia's foreign relations; or  
5 (ii) the performance by a defence agency of its functions.
- 6 (2) The head of a defence agency may determine that paragraphs (1)(a)  
7 and (b) apply to the identification of one or more specified persons  
8 or classes of persons, who are or were relevant members of the  
9 agency, and the determination has effect accordingly.
- 10 (3) The Committee must obtain the advice of the Defence Minister as  
11 to whether the disclosure of any part of the report would or might  
12 disclose a matter referred to in subsection (1).
- 13 (4) The Committee must not present a report of the Committee to a  
14 House of the Parliament if the Defence Minister has advised that  
15 the report or a part of the report would or might disclose such a  
16 matter.

17 **84 Continuance of evidence**

- 18 (1) If:  
19 (a) any evidence or document about a matter has been taken by  
20 or produced to the Committee as constituted at a time; and  
21 (b) either of the following happens before the Committee reports  
22 on the matter:  
23 (i) the Committee as so constituted ceases to exist;  
24 (ii) the constitution of the Committee changes;  
25 the Committee as constituted at a later time, whether during the  
26 same or another Parliament, may consider the evidence or  
27 document as if the evidence or document had been taken by or  
28 produced to it.
- 29 (2) Section 85 applies to each member of the later Committee as if the  
30 evidence or document had been taken or produced to that  
31 Committee.

**Division 4—Offences**

**85 Offences relating to disclosing or publishing certain evidence or documents**

- (1) A person (including a Committee member) commits an offence if:
- (a) the person discloses or publishes evidence taken by, or the contents of a document produced to, the Committee in a review conducted in private; and
  - (b) in the case of disclosure or publication of evidence—the person giving the evidence clearly communicated to the Committee that the evidence contains sensitive and security classified information that must not be disclosed without authorisation; and
  - (c) in the case of disclosure or publication of the contents of a document—markings included in the document clearly identify that it contains sensitive and security classified information that must not be disclosed without authorisation; and
  - (d) the disclosure or publication is not authorised in writing by:
    - (i) if the person who gave the evidence or produced the document is a relevant member of a defence agency—the head of the defence agency; or
    - (ii) in any other case—the person who gave the evidence or produced the document; and
  - (e) the evidence or document has not already been lawfully disclosed or published.

Penalty: Imprisonment for 2 years or 120 penalty units, or both.

- (2) Subsection (1) does not apply to the disclosure or publication by a person of a matter of which the person has become aware otherwise than because of the giving of evidence to which paragraph (1)(b) applies before, or the production of a document to which paragraph (1)(c) applies to, the Committee.

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

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1 (3) Subsection (1) has effect despite section 2 of the *Parliamentary*  
2 *Papers Act 1908*.

3 (4) A reference in this section to evidence includes a reference to a  
4 briefing.

5 **86 Offences relating to giving evidence or producing documents**

6 (1) A person who has been given a notice requiring the person to  
7 appear before the Committee commits an offence if the person:  
8 (a) fails to attend as required by the notice; or  
9 (b) having not been excused or released by the Committee, fails  
10 to attend and report from day to day; or  
11 (c) refuses or fails to be sworn or to make an affirmation; or  
12 (d) refuses or fails to answer a question, not being a question  
13 about a matter in respect of which a certificate under 80 is in  
14 effect, that the Committee requires the person to answer.

15 Penalty: Imprisonment for 6 months or 30 penalty units, or both.

16 (2) Subsection (1) applies to a relevant member who is nominated by  
17 the head of a defence agency under subsection 79(5) to appear  
18 before the Committee to give evidence.

19 (3) Paragraph (1)(d) does not apply if the answer to the question would  
20 tend to incriminate the person.

21 Note: A defendant bears an evidential burden in relation to the matter in  
22 subsection (3) (see subsection 13.3(3) of the *Criminal Code*).

23 (4) A person who has been given a notice requiring the person to  
24 produce a document, not being a document in respect of which a  
25 certificate under section 80 is in effect, to the Committee commits  
26 an offence if the person refuses or fails to produce the document.

27 Penalty: Imprisonment for 6 months or 30 penalty units, or both.

28 (5) Subsection (4) does not apply if the producing of the document  
29 would tend to incriminate the person.

30 Note: A defendant bears an evidential burden in relation to the matter in  
31 subsection (5) (see subsection 13.3(3) of the *Criminal Code*).

- 1 (6) A person commits an offence if the person:  
2 (a) gives evidence to the Committee; and  
3 (b) does so knowing that the evidence is false or misleading in a  
4 material particular.

5 Penalty: Imprisonment for 2 years or 120 penalty units, or both.

6 **87 Protection of witnesses**

- 7 (1) A person who causes or threatens to cause any detriment to another  
8 person with the intention that the other person or a third person  
9 will:

- 10 (a) not attend as a witness before the Committee; or  
11 (b) give false evidence or a falsified document to the Committee;  
12 or  
13 (c) withhold true evidence or a document from the Committee;  
14 commits an offence.

15 Penalty: Imprisonment for 5 years or 300 penalty units, or both.

- 16 (2) A person who otherwise improperly influences another person with  
17 the intention that the other person or a third person will:

- 18 (a) not attend as a witness before the Committee; or  
19 (b) give false evidence or a falsified document to the Committee;  
20 or  
21 (c) withhold true evidence or a document from the Committee;  
22 commits an offence.

23 Penalty: Imprisonment for 5 years or 300 penalty units, or both.

- 24 (3) A person who causes or threatens to cause any detriment to another  
25 person because that other person or a third person appeared before  
26 the Committee or produced a document to the Committee commits  
27 an offence.

28 Penalty: Imprisonment for 5 years or 300 penalty units, or both.

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1 **88 Secrecy**

2 (1) A person who is or has been a member, or a member of the staff, of  
3 the Committee commits an offence if the person, directly or  
4 indirectly:

5 (a) makes a record of, or discloses or communicates to a person,  
6 any information acquired because of holding the office or  
7 employment; or

8 (b) produces to a person a document provided to the Committee  
9 for the purposes of enabling the Committee to perform its  
10 functions;

11 and the action of the person is not carried out for the purposes of  
12 enabling the Committee to perform its functions.

13 Penalty: Imprisonment for 2 years or 120 penalty units, or both.

14 (2) A person who is or has been a member, or a member of the staff, of  
15 the Committee must not be required to:

16 (a) produce in a court a document of which the person has  
17 custody, or to which the person has access, because of the  
18 person's position as a member, or a member of the staff, of  
19 the Committee; or

20 (b) disclose or to communicate to a court any information  
21 obtained by the person because of such a position.

22 (3) In this section:

23 *produce* includes permit access to.

24 **89 Prosecution of offences**

25 A prosecution for an offence against this Division can be instituted  
26 only by the Attorney-General or with the Attorney-General's  
27 consent.



1 **Division 5—Administration**

2 **90 Appointment of members**

- 3 (1) The Committee members who are members of the House of  
4 Representatives must be appointed by resolution of the House on  
5 the nomination of the Prime Minister.
- 6 (2) Before nominating the Committee members, the Prime Minister  
7 must consult with the Leader of each recognised political party that  
8 is represented in the House and does not form part of the  
9 Government.
- 10 (3) The Committee members who are Senators must be appointed by  
11 resolution of the Senate on the nomination of the Leader of the  
12 Government in the Senate.
- 13 (4) Before nominating the Committee members, the Leader of the  
14 Government in the Senate must consult with the Leader of each  
15 recognised political party that is represented in the Senate and does  
16 not form part of the Government.
- 17 (5) In nominating the Committee members, the Prime Minister and the  
18 Leader of the Government in the Senate must have regard to the  
19 desirability of ensuring that the composition of the Committee  
20 reflects the representation of recognised political parties in the  
21 Parliament.
- 22 (6) A person is not eligible for appointment as a Committee member if  
23 the person is:  
24 (a) a Minister; or  
25 (b) the President of the Senate; or  
26 (c) the Speaker of the House of Representatives.

27 **91 Terms of office of Committee members**

- 28 (1) A Committee member holds office during the pleasure of the  
29 House of the Parliament by which the member was appointed.
- 30 (2) A person ceases to hold office as a member of the Committee if:

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- 1 (a) the House of Representatives expires by the passing of time  
2 or is dissolved; or  
3 (b) the person becomes the holder of an office specified in any of  
4 the paragraphs of subsection 90(6); or  
5 (c) the person ceases to be a member of the House of the  
6 Parliament by which the person was appointed; or  
7 (d) the person resigns the person's office as provided by  
8 subsection (3).
- 9 (3) A member of the Committee appointed by a House of the  
10 Parliament may resign the member's office by giving the Presiding  
11 Officer of that House a written resignation.
- 12 (4) A House of the Parliament may appoint one of its members to fill a  
13 vacancy among the members of the Committee appointed by that  
14 House

15 **92 Chair of the Committee**

- 16 (1) There must be a Chair of the Committee, who must be a member of  
17 the Government elected by the members of the Committee from  
18 time to time.
- 19 (2) The Chair of the Committee holds office during the pleasure of the  
20 Committee.
- 21 (3) A person holding office as Chair of the Committee ceases to hold  
22 the office if the person:  
23 (a) ceases to be a member of the Committee; or  
24 (b) resigns the office.
- 25 (4) A person holding office as Chair of the Committee may resign the  
26 office by giving a signed notice of resignation to a meeting of the  
27 Committee.

28 **93 Deputy Chair of the Committee**

- 29 (1) There must be a Deputy Chair of the Committee who must be a  
30 Committee member elected by the members from time to time.

- 1 (2) The Deputy Chair of the Committee holds office during the  
2 pleasure of the Committee.
- 3 (3) A person holding office as Deputy Chair of the Committee ceases  
4 to hold office if the person:  
5 (a) the person ceases to be a Committee member; or  
6 (b) the person resigns the office.
- 7 (4) A person holding office as Deputy Chair of the Committee may  
8 resign the office by giving a signed notice of resignation to a  
9 meeting of the Committee.

#### 10 **94 Meetings**

- 11 (1) The Committee may meet at such times and, subject to  
12 subsection (3), at such places in Australia as the Committee  
13 decides by resolution or, subject to a resolution of the Committee,  
14 as the Chair of the Committee decides.
- 15 (2) The Committee may meet and transact business even though the  
16 Parliament has been prorogued.
- 17 (3) Before the Committee or the Chair of the Committee decides a  
18 place of meeting, the Chair must obtain advice from each of the  
19 heads of defence agencies as to the suitability of the place.
- 20 (4) The Chair of the Committee must preside at all meetings of the  
21 Committee at which the Chair is present.
- 22 (5) If:  
23 (a) the Chair of the Committee is not present at a meeting of the  
24 Committee; and  
25 (b) either:  
26 (i) the meeting is one at which a question is to be decided  
27 by voting, or could reasonably be expected to be so  
28 decided; or  
29 (ii) throughout a continuous period of more than one month  
30 immediately preceding the day of the meeting, the Chair  
31 was absent from duty or from Australia, or was for any



- 1 (2) The Committee member presiding at the meeting has a deliberative  
2 vote.
- 3 (3) The Committee member presiding at the meeting has a casting vote  
4 if votes are equal.

5 **97 Proceedings**

- 6 (1) The proceedings of the Committee are to be conducted in the  
7 manner determined by the Committee.
- 8 (2) The Committee must not conduct a review in public without the  
9 approval of the Defence Minister.
- 10 (3) At a review conducted in private, the Committee may give  
11 directions as to the persons who may be present. In giving such  
12 directions, the Committee must have regard to the requirements of  
13 security and any other matters the Committee thinks fit.

14 **98 Staff of the Committee and staff of Committee members must be**  
15 **cleared for security purposes**

16 The following persons must be cleared for security purposes to a  
17 level that is appropriate having regard to the information that the  
18 person will deal with in that capacity:

- 19 (a) each member of the staff of the Committee;  
20 (b) at least one member of the staff of each Committee member  
21 employed under the *Members of Parliament (Staff) Act 1984*.

22 **99 Protection of information and documents**

- 23 (1) The Committee must make arrangements acceptable to the  
24 Secretary of the Defence Department and the Chief of the Defence  
25 Force for the security of any information held and any records  
26 made by the Committee.
- 27 (2) The Committee must ensure that any documents having a national  
28 security classification provided to the Committee are returned as  
29 soon as possible after the Committee members have examined  
30 them.

1 **Division 6—Subcommittees**

2 **100 Subcommittees**

- 3 (1) The Committee may appoint one or more subcommittees of at least  
4 3 of its members to inquire into and report to the Committee upon  
5 such matters with which the Committee is concerned as the  
6 Committee directs.
- 7 (2) A subcommittee must report in writing to the Committee as soon  
8 as practicable on each matter referred to that subcommittee by the  
9 Committee.
- 10 (3) A subcommittee may sit at any time, including at a time when the  
11 Committee is sitting.

12 **101 Term of office**

- 13 (1) A member of a subcommittee holds office during the pleasure of  
14 the Committee.
- 15 (2) A member of a subcommittee ceases to hold office if:  
16 (a) the person ceases to be a member of the Committee; or  
17 (b) the person resigns the office.
- 18 (3) A member of a subcommittee may resign the member's office by  
19 giving a signed notice of resignation to the Chair of the Committee.

20 **102 Operation of subcommittees**

- 21 (1) A subcommittee may determine matters relating to the operation of  
22 the subcommittee, except as mentioned in subsection (2).
- 23 (2) If the Chair of the Committee gives a direction to a subcommittee  
24 in relation to the operation of the subcommittee, the subcommittee  
25 must operate in accordance with the direction.

26 **103 Application of provisions of Part to subcommittees**

- 27 (1) Divisions 3 and 4 and sections 97, 98 and 99 apply to a  
28 subcommittee appointed under section 100 as if:

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- 1 (a) references to the Committee included references to the  
2 subcommittee; and  
3 (b) references to the Chair of the Committee included references  
4 to a member of the subcommittee authorised by the  
5 subcommittee for the purpose of the provision concerned.

EXPOSURE DRAFT

1 **Part 5—Miscellaneous**  
2

3 **104 Simplified outline of this Part**

4 This Part deals with miscellaneous matters such as protection from  
5 liability for certain protected persons and the making of rules.

6 **105 Protection from liability**

- 7 (1) This section applies to the following persons (*protected persons*):  
8 (a) the Defence Capability Assurance Agency;  
9 (b) the Director;  
10 (c) a person acting under the Director's authority;  
11 (d) the Inspector-General;  
12 (e) a person acting under the Inspector-General's authority.
- 13 (2) A protected person is not liable to civil proceedings for loss,  
14 damage or injury of any kind suffered by another person as a result  
15 of the performance or exercise, in good faith, of the protected  
16 person's functions, powers or duties under or in relation to this  
17 Act.

18 **106 Rules**

- 19 (1) The Defence Minister may, by legislative instrument, make rules  
20 prescribing matters:  
21 (a) required or permitted by this Act to be prescribed by the  
22 rules; or  
23 (b) necessary or convenient to be prescribed for carrying out or  
24 giving effect to this Act.
- 25 (2) To avoid doubt, the rules may not do the following:  
26 (a) create an offence or civil penalty;  
27 (b) provide powers of:  
28 (i) arrest or detention; or  
29 (ii) entry, search or seizure;



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- 1 (c) impose a tax;
- 2 (d) set an amount to be appropriated from the Consolidated
- 3 Revenue Fund under an appropriation in this Act;
- 4 (e) directly amend the text of this Act.

EXPOSURE DRAFT