

Our ref: CLC/PuLC:RMjf010526

1 May 2026

Dr James Popple
Chief Executive Officer
Law Council of Australia

By email: [REDACTED]

Dear Dr Popple,

SECRECY PROVISIONS AMENDMENT (REPEALING OFFENCES) BILL 2026 (CTH)

The Law Society is grateful for the opportunity to provide input to inform the Law Council of Australia's submission to the Senate Legal and Constitutional Affairs Legislation Committee in response to the Secrecy Provisions Amendment (Repealing Offences) Bill 2026 (**Bill**). The Law Society's Criminal Law and Public Law Committees contributed to this submission.

The Law Society recognises that secrecy offences play a legitimate and important role in protecting the confidentiality of Commonwealth information, noting that unauthorised disclosures have the potential to cause significant harm to essential public interests, such as national security and public safety.

In our view, secrecy offences must strike an appropriate balance between protecting confidential and sensitive government information and the public interest in transparent and accountable government. While the Law Society, in principle, supports efforts to reduce the complexity and volume of disparate Commonwealth secrecy offences, the introduction of a generalised secrecy offence must be closely considered to mitigate against overreach and unintended consequences.

We are particularly concerned about the proposed new offence contrary to section 122.4 *Criminal Code Act 1995* (Cth). The current offence contrary to section 122.4 criminalises the communication of information by current or former Commonwealth officers (or those otherwise engaged to perform work for a Commonwealth entity) in circumstances where the person is "under a duty not to disclose the information".¹ The proposed new provision appears significantly broader in scope. The new offence would apply where the person uses or communicates information with the intention of obtaining, or seeking to obtain, a benefit, or causing, or seeking to cause, detriment to the Commonwealth or any other person, and it would be reasonable to conclude that the use or communication of the information is "improper".

In our view, the proposed new offence against section 122.4 is inappropriately broad and risks criminalising unintended conduct. We understand consideration of whether something is "improper" to connote consideration of whether the conduct falls below acceptable standards or is otherwise inappropriate. We consider this very low threshold incongruous in the context of a generalised secrecy offence carrying a term of imprisonment. In our view, secrecy provisions should only attract criminal sanction where this is necessary and proportionate to

¹ *Criminal Code Act 1995* (Cth), s 122.4(1)(c).

protect the most sensitive government information, not merely where the communication or use of the information is “improper”.

Secondly, the offence captures circumstances where there is an *intent* to obtain a benefit or cause a detriment, but no actual harm caused. In our view, the proposed new offence contrary to section 122.4 should more closely adhere to the recommendations made by the Independent National Security Legislation Monitor in its *Review of Part 5.6 of the Criminal Code Act 1995*.² In particular, we consider that a generalised secrecy offence should be harm-based and relate to essential public interests.³

As drafted, we consider the proposed new generalised secrecy offence to be inappropriately broad in scope and imprecise in its language, which may result in unintended consequences and overreach. We strongly suggest the language be reconsidered to ensure the relevant conduct is targeted. Lastly, we suggest close review of the Bill to ensure it does not undermine existing public interest disclosure protections.

Thank you for the opportunity to provide feedback of the Bill. Inquiries at first instance may be directed to Jade Fodera, Policy Lawyer, at (02) 9926 0218 or Jade.Fodera@lawsociety.com.au.

Yours sincerely,



Ronan MacSweeney
President

² INSLM, *Secrecy Offences – Review of Part 5.6 of the Criminal Code Act 1995* (27 June 2024), available at: <https://www.inslm.gov.au/publications/secrecy-offences-review-part-56-criminal-code-act-1995>.

³ Ibid, p viii.