Intelligence Services Legislation Amendment Act 2011

No. 80, 2011

An Act to amend laws relating to intelligence, and for other purposes

Contents

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[*Assented to 25 July 2011*]

The Parliament of Australia enacts:

1 Short title

This Act may be cited as the *Intelligence Services Legislation Amendment Act 2011*.

2 Commencement

This Act commences on the day after this Act receives the Royal Assent.

3 Schedule(s)

Each Act that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

Schedule 1—Amendments of intelligence laws etc.

Part 1—Amendments

Australian Security Intelligence Organisation Act 1979

1 Section 4

Insert:

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

2 Section 4

Insert:

> *Foreign Affairs Minister* means the Minister administering the *Diplomatic Privileges and Immunities Act 1967*.

3 Section 4 (definition of *foreign intelligence*)

Repeal the definition, substitute:

> *foreign intelligence* means intelligence about the capabilities, intentions or activities of people or organisations outside Australia.

4 Paragraph 25A(4)(a)

Omit "stored in the target computer", substitute "held in the target computer at any time while the warrant is in force".

5 Paragraph 27A(1)(a)

After "the Minister" (first occurring), insert "(the *issuing Minister*)".

6 Paragraph 27A(1)(a)

After "requesting the", insert "issuing".

7 Paragraph 27A(1)(b)

Repeal the paragraph, substitute:

   (b) the issuing Minister is satisfied, on the basis of advice
       received from the Defence Minister or the Foreign Affairs
       Minister, that the collection of foreign intelligence relating to
       that matter is in the interests of Australia's national security,
       Australia's foreign relations or Australia's national economic
       well-being;

8 Subsection 27A(1)

Omit "the Minister may", substitute "the issuing Minister may".

9 Subsection 27A(1)

Omit "the Minister considers", substitute "the issuing Minister
considers".

10 Subsection 27A(3)

Omit "the Minister", substitute "the issuing Minister".

11 Paragraph 27B(a)

After "the Minister" (first occurring), insert "(the *authorising
Minister*)".

12 Paragraph 27B(a)

After "requesting the", insert "authorising".

13 Paragraph 27B(b)

Repeal the paragraph, substitute:

   (b) the authorising Minister is satisfied, on the basis of advice
       received from the Defence Minister or the Foreign Affairs
       Minister, that the collection of foreign intelligence relating to
       that matter is in the interests of Australia's national security,
       Australia's foreign relations or Australia's national economic
       well-being;

14 Section 27B

Omit "the Minister may", substitute "the authorising Minister may".

15 Section 27B

Omit "by the Minister", substitute "by the authorising Minister".

16 Subsection 35(1)

Insert:

> *agency head* means:
>   (a) the Director-General; or
>   (b) the Director-General of the Australian Secret Intelligence Service; or
>   (c) the Director-General of the Office of National Assessments; or
>   (d) the Director of that part of the Defence Department known as the Defence Imagery and Geospatial Organisation; or
>   (e) the Director of that part of the Defence Department known as the Defence Intelligence Organisation; or
>   (f) the Director of that part of the Defence Department known as the Defence Signals Directorate.

17 Subsection 35(1)

Insert:

> *staff member* of the Organisation or an intelligence or security agency means:
>   (a) the agency head of the Organisation or agency; or
>   (b) an employee or officer of the Organisation or agency; or
>   (c) a consultant or contractor to the Organisation or agency; or
>   (d) a person who is made available by an authority of the Commonwealth, authority of a State or other person to perform services for the Organisation or agency.

18 At the end of section 36

Add:

> ; or (c) a security assessment in relation to the engagement, or proposed engagement, of a person by or in the Organisation, or an intelligence or security agency, as a staff member of the Organisation or agency.

Criminal Code Act 1995

19 After subsection 476.5(2A) of the *Criminal Code*

Insert:

(2AA) Subsections (1) and (2) have effect despite anything in a law of the Commonwealth or of a State or Territory, whether passed or made before or after the commencement of this subsection, unless the law expressly provides otherwise.

(2AB) Subsection (2AA) does not affect the operation of subsection (2A).

Intelligence Services Act 2001

20 After subsection 6(3)

Insert:

(3A) A direction under paragraph (1)(e) is not a legislative instrument.

21 At the end of section 6B

Add:

; and (g) to provide assistance to the Defence Force in support of military operations and to cooperate with the Defence Force on intelligence matters.

Note: For limits on the agency's functions and activities see sections 11 and 12.

22 At the end of section 8 (before the note)

Add:

(5) A direction given under this section is not a legislative instrument.

23 After subparagraph 9(1A)(a)(iv)

Insert:

(iva) activities related to a contravention, or an alleged contravention, by a person of a UN sanction enforcement law;

24 Subsection 9(1B)

Insert:

UN sanction enforcement law has the same meaning as in the *Charter of the United Nations Act 1945*.

25 Subsection 11(3)

Omit "6B(b), (c), (d), (e) and (f)", substitute "6B(b), (c), (d), (e), (f) and (g)".

26 After subsection 14(2A)

Insert:

(2AA) Subsections (1) and (2) have effect despite anything in a law of the Commonwealth or of a State or Territory, whether passed or made before or after the commencement of this subsection, unless the law expressly provides otherwise.

(2AB) Subsection (2AA) does not affect the operation of subsection (2A).

27 At the end of section 15

Add:

(7) Rules made under subsection (1) are not legislative instruments.

28 At the end of clause 1 of Schedule 2

Add:

(8) Guidelines issued under subclause (6) are not legislative instruments.

Part 2—Application provisions

29 Application—paragraph 25A(4)(a) of the *Australian Security Intelligence Organisation Act 1979*

Paragraph 25A(4)(a) of the *Australian Security Intelligence Organisation Act 1979*, as amended by this Schedule, applies in relation to a request that is made under subsection 25A(1) of that Act after this Schedule commences.

30 Application—sections 27A and 27B of the *Australian Security Intelligence Organisation Act 1979*

(1) Section 27A of the *Australian Security Intelligence Organisation Act 1979*, as amended by this Schedule, applies in relation to a notice that is given under paragraph 27A(1)(a) of that Act after this Schedule commences.

(2) Section 27B of the *Australian Security Intelligence Organisation Act 1979*, as amended by this Schedule, applies in relation to a notice that is given under paragraph 27B(a) of that Act after this Schedule commences.

31 Application—paragraph 36(c) of the *Australian Security Intelligence Organisation Act 1979*

Paragraph 36(c) of the *Australian Security Intelligence Organisation Act 1979*, as added by this Schedule, applies in relation to a security assessment that is furnished by the Organisation after this Schedule commences.

32 Application—subsection 15(7) of the *Intelligence Services Act 2001*

Subsection 15(7) of the *Intelligence Services Act 2001*, as added by this Schedule, applies in relation to rules that are made under subsection 15(1) of that Act before or after this Schedule commences.