



ASIO Legislation Amendment Act 2003

No. 143, 2003

An Act to amend the law relating to the Australian Security Intelligence Organisation, and for related purposes

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No. 143, 2003

An Act to amend the law relating to the Australian Security Intelligence Organisation, and for related purposes

[Assented to 17 December 2003]

The Parliament of Australia enacts:

1 Short title

This Act may be cited as the *ASIO Legislation Amendment Act 2003*.

2 Commencement

This Act commences on the day after it 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Each Act that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.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—Australian Security Intelligence Organisation Act 1979

Part 1—Time for questioning through interpreter

1 At the end of section 34HB

Add:

Extra time for questioning with interpreter present

- (8) Subsections (9), (10), (11) and (12) apply if, because of section 34H or 34HAA, an interpreter is present at any time while a person is questioned under a warrant issued under section 34D.
- (9) Anyone exercising authority under the warrant must not question the person under the warrant if the person has been questioned under the warrant for a total of 24, 32 or 40 hours, unless the prescribed authority before whom the person was being questioned just before the duration of that questioning reached that total permits the questioning to continue beyond that total for the purposes of this subsection.
- (10) Subsections (3), (4) and (5) and paragraph (7)(b) apply in relation to permitting, for the purposes of subsection (9), the questioning to continue beyond a total mentioned in subsection (9) in the same way as they apply in relation to permitting the questioning to continue for the purposes of subsection (1) or (2).
- (11) Subsection (6) and paragraph (7)(c) apply as if that subsection referred to a total of 48 hours (instead of 24 hours).
- (12) Paragraph (7)(a) applies as if it referred to the time at which the duration of questioning reached the total mentioned in subsection (1), (2) or (9) beyond which the questioning is not permitted to continue.

2 Application

The amendment made by this Part applies in relation to warrants issued on or after the commencement of this Part.

Part 2—Preventing unauthorised overseas travel by person specified in warrant

3 After section 34JB

Insert:

34JC Surrender of passport by person specified in warrant

- (1) As soon as practicable after the person specified in a warrant issued under section 34D is notified of the issue of the warrant and of the effect of this subsection, the person must deliver to someone exercising authority under the warrant every passport that:
 - (a) is an Australian passport (as defined in the *Passports Act 1938*), or a foreign passport, that has been issued to the person; and
 - (b) the person has in his or her possession or control.

Penalty: Imprisonment for 5 years.
- (2) The Director-General must cause a passport delivered under subsection (1) to be returned to the person to whom it was issued, as soon as practicable after the end of the period specified in the warrant under paragraph 34D(6)(b) (about how long the warrant is in force), but may cause the passport to be returned to that person earlier.
- (3) However, subsection (2) does not require:
 - (a) the return of a passport during a period specified under paragraph 34D(6)(b) in another warrant that specifies the person to whom the passport was issued; or
 - (b) the return of a passport that has been cancelled.
- (4) After a passport is delivered under subsection (1) and before it is returned under subsection (2), a person approved under subsection 24(1) in relation to the warrant mentioned in subsection (1) of this section may:
 - (a) inspect or examine the passport; and
 - (b) make copies or transcripts of it.

34JD Person specified in warrant must not leave Australia without permission

- (1) A person commits an offence if:
- (a) the person has been notified of:
 - (i) the issue of a warrant under section 34D that specifies the person; and
 - (ii) the effect of this subsection in connection with the warrant; and
 - (b) the person leaves Australia; and
 - (c) the leaving occurs:
 - (i) after the person has been notified of the issue of the warrant and of the effect of this subsection in connection with the warrant; and
 - (ii) before the end of the period specified in the warrant as the period during which the warrant is to be in force; and
 - (d) the person does not have written permission from the Director-General to leave Australia at the time the person leaves Australia.

Penalty: Imprisonment for 5 years.

- (2) The Director-General may give written permission for a person to leave Australia at a specified time. The permission may be given either unconditionally or subject to specified conditions.

Note 1: The Director-General may revoke or amend the permission. See subsection 33(3) of the *Acts Interpretation Act 1901*.

Note 2: If permission is given subject to a condition and the condition is not met, the permission is not in force.

4 Application

- (1) Section 34JC of the *Australian Security Intelligence Organisation Act 1979* applies in relation to a passport issued (before, on or after the commencement of that section) to a person who is notified, on or after that commencement, of the issue of a warrant.
- (2) Section 34JD of the *Australian Security Intelligence Organisation Act 1979* applies to a person leaving Australia on or after the

Schedule 1 Australian Security Intelligence Organisation Act 1979

Part 2 Preventing unauthorised overseas travel by person specified in warrant

commencement of that section, whether notice of the issue of the warrant was given to the person before, on or after that commencement.

Part 3—Direction by prescribed authority to detain

5 After subsection 34F(2)

Insert:

(2A) To avoid doubt, the mere fact that the warrant is one meeting the requirement in paragraph 34D(2)(a) does not prevent a direction under subsection (1) of this section from being consistent with the warrant for the purposes of subsection (2) of this section.

Note: A warrant meeting the requirement in paragraph 34D(2)(a) requires a person to appear before a prescribed authority for questioning under the warrant (rather than authorising the person to be taken into custody, brought before a prescribed authority and detained).

6 Application

The amendment made by this Part applies in relation to warrants issued on or after the commencement of this Part.

Part 4—Secrecy relating to warrants and questioning

7 At the end of paragraph 34F(1)(d)

Add “and to disclose information other than specified information while in contact”.

8 Subsections 34U(7), (8), (9), (10) and (11)

Repeal the subsections.

9 Subsections 34V(4), (5) and (6)

Repeal the subsections.

10 After section 34V

Insert:

34VAA Secrecy relating to warrants and questioning

Before the expiry of the warrant

- (1) A person (the *discloser*) commits an offence if:
 - (a) a warrant has been issued under section 34D; and
 - (b) the discloser discloses information; and
 - (c) either or both of the following apply:
 - (i) the information indicates the fact that the warrant has been issued or a fact relating to the content of the warrant or to the questioning or detention of a person in connection with the warrant;
 - (ii) the information is operational information; and
 - (d) if subparagraph (c)(ii) applies but subparagraph (c)(i) does not—the discloser has the information as a direct or indirect result of:
 - (i) the issue of the warrant; or
 - (ii) the doing of anything authorised by the warrant, by a direction given under subsection 34F(1) in connection with the warrant or by another provision of this Division in connection with the warrant; and

- (e) the disclosure occurs before the end of the period specified in the warrant as the period for which the warrant is to be in force; and
- (f) the disclosure is not a permitted disclosure.

Penalty: Imprisonment for 5 years.

In the 2 years after the expiry of the warrant

- (2) A person (the **discloser**) commits an offence if:
 - (a) a warrant has been issued under section 34D; and
 - (b) the discloser discloses information; and
 - (c) the information is operational information; and
 - (d) the discloser has the information as a direct or indirect result of:
 - (i) the issue of the warrant; or
 - (ii) the doing of anything authorised by the warrant, by a direction given under subsection 34F(1) in connection with the warrant or by another provision of this Division in connection with the warrant; and
 - (e) the disclosure occurs before the end of the 2 years starting at the end of the period specified in the warrant as the period during which the warrant is to be in force; and
 - (f) the disclosure is not a permitted disclosure.

Penalty: Imprisonment for 5 years.

Strict liability

- (3) Strict liability applies to paragraphs (1)(c) and (2)(c) if the discloser is:
 - (a) the person (the **subject**) specified in the warrant; or
 - (b) a lawyer who has at any time been:
 - (i) present, as the subject's legal adviser, at the questioning of the subject under the warrant; or
 - (ii) contacted for the purpose of the subject obtaining legal advice in connection with the warrant; or
 - (iii) contacted for the purpose of the subject obtaining representation in legal proceedings seeking a remedy

relating to the warrant or the treatment of the subject in connection with the warrant.

Otherwise, the fault element applying to paragraphs (1)(c) and (2)(c) is recklessness.

Note: For strict liability, see section 6.1 of the *Criminal Code*. For recklessness, see section 5.4 of the *Criminal Code*.

Extended geographical jurisdiction—category D

- (4) Section 15.4 of the *Criminal Code* (extended geographical jurisdiction—category D) applies to an offence against subsection (1) or (2).

Definitions

- (5) In this section:

operational information means information indicating one or more of the following:

- (a) information that the Organisation has or had;
- (b) a source of information (other than the person specified in the warrant mentioned in subsection (1) or (2)) that the Organisation has or had;
- (c) an operational capability, method or plan of the Organisation.

permitted disclosure means any of the following:

- (a) a disclosure made by a person in the course of any of the following:
 - (i) exercising a power, or performing a function or duty, under this Act;
 - (ii) doing anything the person is authorised to do by a warrant issued under this Act;
 - (iii) doing anything the person is required or permitted to do by a direction under subsection 34F(1);
 - (iv) exercising a power (including a power to make a complaint), or performing a function or duty, under the *Complaints (Australian Federal Police) Act 1981* or the *Inspector-General of Intelligence and Security Act 1986*;
- (b) a disclosure that is:

- (i) made in the course of the questioning of a person under a warrant issued under section 34D; and
 - (ii) made by a person who is present at the questioning when making the disclosure;
 - (c) a disclosure to a lawyer for the purpose of:
 - (i) obtaining legal advice in connection with a warrant issued under section 34D; or
 - (ii) obtaining representation in legal proceedings seeking a remedy relating to such a warrant or the treatment of a person in connection with such a warrant;
 - (d) a disclosure for the purpose of the initiation, conduct or conclusion (by judgment or settlement) of legal proceedings relating to such a remedy;
 - (e) a disclosure that is permitted by a prescribed authority to be made;
 - (f) a disclosure to one or more of the following persons, by the representative mentioned in subsection 34V(1) or by a parent, guardian or sibling of the subject mentioned in that subsection, of information described in paragraph (1)(c) or (2)(c) of this section in relation to the warrant mentioned in that subsection:
 - (i) a parent, guardian or sibling of the subject;
 - (ii) the representative;
 - (iii) a prescribed authority;
 - (iv) a person exercising authority under the warrant;
 - (v) the Inspector-General of Intelligence and Security;
 - (vi) the Ombudsman;
 - (g) a disclosure permitted by the Director-General;
 - (h) a disclosure permitted by the Minister;
 - (i) a disclosure prescribed by the regulations.
- (6) For the purposes of paragraph (e) of the definition of ***permitted disclosure*** in subsection (5), a prescribed authority may give written permission, not inconsistent with the regulations (if any), for:
- (a) a person contacted as described in subsection 34U(1); or
 - (b) the representative mentioned in subsection 34V(1);

to disclose specified information to a specified person. The permission may be given either unconditionally or subject to specified conditions.

Note 1: The prescribed authority may revoke or amend the permission. See subsection 33(3) of the *Acts Interpretation Act 1901*.

Note 2: If permission is given subject to a condition and the condition is not met, the permission is not in force.

- (7) For the purposes of paragraph (g) of the definition of ***permitted disclosure*** in subsection (5), the Director-General may give written permission for a disclosure. The permission may be given either unconditionally or subject to specified conditions.

Note 1: The Director-General may revoke or amend the permission. See subsection 33(3) of the *Acts Interpretation Act 1901*.

Note 2: If permission is given subject to a condition and the condition is not met, the permission is not in force.

- (8) For the purposes of paragraph (h) of the definition of ***permitted disclosure*** in subsection (5), the Minister may, after obtaining advice from the Director-General, give written permission for a disclosure. The permission may be given either unconditionally or subject to specified conditions.

Note 1: The Minister may, after obtaining advice from the Director-General, revoke or amend the permission. See subsection 33(3) of the *Acts Interpretation Act 1901*.

Note 2: If permission is given subject to a condition and the condition is not met, the permission is not in force.

- (9) Regulations made for the purposes of paragraph (i) of the definition of ***permitted disclosure*** in subsection (5) may prescribe a disclosure by reference to one or more of the following:

- (a) the person making the disclosure;
- (b) the person to whom the disclosure is made;
- (c) the circumstances in which the disclosure is made;
- (d) the purpose of the disclosure;
- (e) the nature of information disclosed;
- (f) an opinion of a specified person about the possible or likely effect of the disclosure.

This subsection does not limit the way in which such regulations may prescribe a disclosure.

Offences apply to original and previously disclosed information

- (10) To avoid doubt, subsections (1) and (2) apply whether or not the discloser has the information that he or she discloses as a result of a disclosure by someone else.

Relationship with other laws prohibiting disclosure

- (11) This section has effect in addition to, and does not limit, other laws of the Commonwealth that prohibit the disclosure of information.

Implied freedom of political communication

- (12) This section does not apply to the extent (if any) that it would infringe any constitutional doctrine of implied freedom of political communication.

11 Application

The amendments made by this Part apply in relation to warrants issued on or after the commencement of this Part.

Schedule 2—Intelligence Services Act 2001

1 Paragraph 29(1)(bb)

Repeal the paragraph, substitute:

- (bb) to review, by 22 January 2006, the operation, effectiveness and implications of:
 - (i) Division 3 of Part III of the *Australian Security Intelligence Organisation Act 1979*; and
 - (ii) the amendments made by the *Australian Security Intelligence Organisation Legislation Amendment (Terrorism) Act 2003*, except item 24 of Schedule 1 to that Act (which included Division 3 of Part III in the *Australian Security Intelligence Organisation Act 1979*); and
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*[Minister's second reading speech made in—
House of Representatives on 27 November 2003
Senate on 3 December 2003]*