



# **Intelligence and Security (Consequential Amendments) Act 1986**

**No. 102 of 1986**

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# **Intelligence and Security (Consequential Amendments) Act 1986**

**No. 102 of 1986**

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**An Act to make amendments of various Acts consequential upon the enactment of the *Australian Security Intelligence Organization Amendment Act 1986* and the *Inspector-General of Intelligence and Security Act 1986*, and for other purposes**

[Assented to 17 October 1986]

BE IT ENACTED by the Queen, and the Senate and the House of Representatives of the Commonwealth of Australia, as follows:

## **PART I—PRELIMINARY**

### **Short title**

1. This Act may be cited as the *Intelligence and Security (Consequential Amendments) Act 1986*.

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**Commencement**

2. This Act shall come into operation on the day fixed under sub-section 2 (1) of the *Australian Security Intelligence Organization Amendment Act 1986*.

**PART II—AMENDMENTS OF THE ADMINISTRATIVE  
DECISIONS (JUDICIAL REVIEW) ACT 1977**

**Principal Act**

3. The *Administrative Decisions (Judicial Review) Act 1977*<sup>1</sup> is in this Part referred to as the Principal Act.

**Schedule 1**

4. Schedule 1 to the Principal Act is amended—

- (a) by inserting in paragraph (d) “*Inspector-General of Intelligence and Security Act 1986*” after “*Australian Security Intelligence Organization Act 1979*”; and
- (b) by inserting after paragraph (d) the following paragraph:  
“(da) decisions under section 13 of the *Migration Act 1958*”.

**PART III—AMENDMENTS OF THE ARCHIVES ACT 1983**

**Principal Act**

5. The *Archives Act 1983*<sup>2</sup> is in this Part referred to as the Principal Act.

**Exemption of certain records**

6. Section 29 of the Principal Act is amended—

- (a) by omitting “and” from the end of paragraph (8) (d); and
- (b) by adding at the end of sub-section (8) the following word and paragraph:  
“; and (f) the Inspector-General of Intelligence and Security.”.

**PART IV—AMENDMENTS OF THE AUDIT ACT 1901**

**Principal Act**

7. The *Audit Act 1901*<sup>3</sup> is in this Part referred to as the Principal Act.

**Responsibilities of Secretaries**

8. Section 2AB of the Principal Act is amended by adding at the end the following sub-section:

“(3) Sub-section (1) applies in relation to the Australian Security Intelligence Organization as if the reference to the Secretary were a

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reference to the Director-General of Security, and a reference to a Department were a reference to the Organization.”.

**Exempt accounts**

9. Section 70D of the Principal Act is amended—

- (a) by omitting from the end of paragraph (5) (a) “and”; and
- (b) by inserting after paragraph (5) (b) the following paragraphs:
  - “(c) whether those exempt accounts, during that financial year, or during the part of that financial year during which they were exempt accounts, have been inspected and audited; and
  - (d) whether any irregularity or deficiency in those exempt accounts has been disclosed in relation to that period, and if so, whether the irregularity or deficiency has been resolved or rectified.”.

**PART V—AMENDMENTS OF THE CRIMES ACT 1914**

**Principal Act**

10. The *Crimes Act 1914*<sup>4</sup> is in this Part referred to as the Principal Act.

**Definition of seditious intention**

11. Section 24A of the Principal Act is amended by omitting paragraphs (b), (c) and (e).

**Offences**

12. Section 24C of the Principal Act is amended by inserting “with the intention of causing violence or creating public disorder or a public disturbance,” before “shall be guilty”.

**Seditious words**

13. Section 24D of the Principal Act is amended by inserting in subsection (1) “, with the intention of causing violence or creating public disorder or a public disturbance,” after “Any person who”.

**Certain acts done in good faith not unlawful**

14. Section 24F of the Principal Act is amended—

- (a) by omitting “or” from the end of paragraph (2) (c); and
- (b) by inserting after paragraph (2) (d) the following word and paragraph:
  - “; or (e) with the intention of causing violence or creating public disorder or a public disturbance,”.

**PART VI—AMENDMENTS OF THE FREEDOM OF  
INFORMATION ACT 1982**

**Principal Act**

15. The *Freedom of Information Act 1982*<sup>5</sup> is in this Part referred to as the Principal Act.

**Exemption of Certain Bodies**

16. Section 7 of the Principal Act is amended by inserting in sub-section (2A) “, the Inspector-General of Intelligence and Security” after “Australian Security Intelligence Organization”.

**Schedule 2**

17. Schedule 2 to the Principal Act is amended by inserting in Part I “Inspector-General of Intelligence and Security” after “Housing Loans Insurance Corporation”.

**PART VII—AMENDMENT OF THE HUMAN RIGHTS  
COMMISSION ACT 1981**

**Principal Act**

18. The *Human Rights Commission Act 1981*<sup>6</sup> is in this Part referred to as the Principal Act.

**Functions of Commission**

19. Section 9 of the Principal Act is amended by inserting after sub-section (2) the following sub-sections:

“(2A) Notwithstanding paragraph (1) (b), the functions of the Commission do not include inquiring into an act or practice of an intelligence agency, but where a complaint is made to the Commission alleging that an act or practice of such an agency is inconsistent with or contrary to any human right, the Commission shall refer the complaint to the Inspector-General of Intelligence and Security.

“(2B) A reference in sub-section (2A) to an intelligence agency is a reference to the Australian Secret Intelligence Service, the Australian Security Intelligence Organization, the Office of National Assessments, that part of the Department of Defence known as the Defence Signals Directorate, including any part of the Defence Force that performs functions on behalf of that part of that Department, or that part of the Department of Defence known as the Joint Intelligence Organisation.”.

**PART VIII—AMENDMENTS OF THE MIGRATION ACT 1958**

**Principal Act**

20. The *Migration Act 1958*<sup>7</sup> is in this Part referred to as the Principal Act.

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21. After section 12 of the Principal Act the following section is inserted:

**Deportation of non-citizens upon security grounds**

“13. (1) Where—

- (a) it appears to the Minister that the conduct (whether in Australia or elsewhere and either before or after the commencement of this sub-section) of a non-citizen (not being a person who has been present in Australia as a permanent resident for a period of at least 10 years or periods that, in the aggregate, amount to a period of at least 10 years) constitutes, or has constituted, a threat to the security of the Commonwealth, of a State or of an internal or external Territory; and
- (b) the Minister has been furnished with an adverse security assessment in respect of the non-citizen by the Organization, being an assessment made for the purposes of this sub-section,

the Minister may, subject to this section, order the deportation of the non-citizen.

“(2) Where—

- (a) sub-section (1) applies in relation to a non-citizen;
- (b) the adverse security assessment made in respect of the non-citizen is not an assessment to which a certificate given in accordance with paragraph 38 (2) (a) of the *Australian Security Intelligence Organization Act 1979* applies; and
- (c) the non-citizen applies to the Tribunal for a review of the security assessment before the end of 30 days after the receipt by the non-citizen of notice of the assessment and the Tribunal, after reviewing the assessment, finds that the security assessment should not have been an adverse security assessment,

the Minister shall not order the deportation of the non-citizen.

“(3) Where—

- (a) sub-section (1) applies in relation to a non-citizen;
- (b) the adverse security assessment made in respect of the non-citizen is an assessment to which a certificate given in accordance with paragraph 38 (2) (a) of the *Australian Security Intelligence Organization Act 1979* applies; and
- (c) the Attorney-General has, in accordance with section 65 of that Act, required the Tribunal to review the assessment,

the Minister shall not order the deportation of the non-citizen unless, following the receipt by the Attorney-General of the findings of the Tribunal, the Attorney-General advises the Minister that the Tribunal has confirmed the assessment.

“(4) A notice given by the Minister pursuant to sub-section 38 (1) of the *Australian Security Intelligence Organization Act 1979* informing a

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person of the making of an adverse security assessment, being an assessment made for the purposes of sub-section (1) of this section, shall contain a statement to the effect that the assessment was made for the purposes of sub-section (1) of this section and that the person may be deported pursuant to this section.

“(5) Notwithstanding section 55 of the *Australian Security Intelligence Organization Act 1979*, the Tribunal shall not extend beyond the period of 30 days referred to in that section the time within which a person may apply to the Tribunal for a review of an adverse security assessment made for the purposes of sub-section (1) of this section.

“(6) In this section—

‘adverse security assessment’, ‘security assessment’ and ‘Tribunal’ have the same meanings as they have in Part IV of the *Australian Security Intelligence Organization Act 1979*;

‘Organization’ means the Australian Security Intelligence Organization.”.

**Deportation of non-citizens who are convicted of certain serious offences**

22. Section 14 of the Principal Act is amended by omitting sub-section (1).

**Definition of permanent resident**

23. Section 14A of the Principal Act is amended by omitting from sub-sections (1) and (2) “sub-section 14 (1)” and substituting “sub-section 13 (1)”.

**PART IX—AMENDMENTS OF THE TELECOMMUNICATIONS  
(INTERCEPTION) ACT 1979**

**Principal Act**

24. The *Telecommunications (Interception) Act 1979*<sup>8</sup> is in this Part referred to as the Principal Act.

**Title**

25. The title of the Principal Act is amended by omitting “specially authorised in the interests of security or in connection with inquiries relating to narcotics offences” and substituting “authorised in special circumstances”.

**Interpretation**

26. Section 5 of the Principal Act is amended—

(a) by inserting after the definition of “communication” in sub-section (1) the following definition:

“‘foreign intelligence’ has the same meaning as it has in the *Australian Security Intelligence Organization Act 1979*”; and



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- (b) by inserting "11A," after "11," in the definition of "warrant" in sub-section (1).

**Telecommunications not to be intercepted**

**27.** Section 7 of the Principal Act is amended—

- (a) by omitting sub-section (4) and substituting the following sub-sections:

"(4) Subject to this section, a person shall not divulge or communicate to another person, or make use of or record, any information obtained by intercepting a communication passing over a telecommunications system, or obtained by virtue of a warrant issued under section 11, 11A or 21, except in the performance of a duty of the first-mentioned person as an officer of the Commission.

Penalty: \$5,000 or imprisonment for 2 years.

"(4A) A person may communicate, make use of, or make a record of, information of the kind referred to in sub-section (4) (other than information obtained by virtue of a warrant issued under section 11A)—

- (a) in or in connection with the performance by the Organization of its functions or otherwise for purposes of security; or  
(b) for the purpose of narcotics inquiries that are being, or have been, made by members of the Australian Federal Police.

"(4B) The Director-General of Security or an officer or employee of the Organization may, in or in connection with the performance by the Organization of its functions—

- (a) communicate to another person, being the Director-General of Security or an officer or employee of the Organization; or

(b) make use of, or make a record of, information obtained by virtue of a warrant issued under section 11A.";

- (b) by omitting from paragraph (5) (a) ", (b) or (c)" and substituting "or (c)";  
(c) by inserting in paragraph (5) (a) "or 11A" after "section 11";  
(d) by omitting from paragraph (5) (c) "or (b)";  
(e) by omitting from the end of paragraph (5) (c) "and"; and  
(f) by inserting after paragraph (5) (c) the following paragraph:

"(ca) a person to whom information obtained by virtue of a warrant issued under section 11A has been communicated in accordance with paragraph (a) or in accordance with an approval given under this paragraph may communicate that information to such persons, and in such manner, as are approved in writing by the Attorney-General; and".

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28. After section 11 of the Principal Act the following section is inserted:

**Warrants for the performance of functions under paragraph 17 (1) (e) of the ASIO Act**

“11A. (1) Where—

- (a) the Director-General of Security gives a notice in writing to the Attorney-General requesting the Attorney-General to issue a warrant under this section authorising persons approved under section 12 in respect of the warrant to do acts or things referred to in sub-section 9 (1) in relation to a particular telecommunications service, or authorising the Commission to do acts or things referred to in sub-section 11 (1) in relation to a person identified in the notice, for the purpose of obtaining foreign intelligence relating to a matter specified in the notice; and
- (b) the Attorney-General is satisfied, on the basis of advice received from the relevant Minister, that the collection of foreign intelligence relating to that matter is important in relation to the defence of the Commonwealth or to the conduct of the Commonwealth's international affairs,

the Attorney-General may, by warrant under his or her hand, authorise persons approved under section 12 in respect of the warrant or the Commission, as the case may be, subject to any conditions or restrictions that are specified in the warrant, to do such of those acts or things in relation to that telecommunications service or that person, as the case may be, as the Attorney-General considers appropriate in the circumstances and are specified in the warrant, for the purpose of obtaining that intelligence.

“(2) A request by the Director-General of Security for the issue of a warrant under this section—

- (a) in the case of a warrant in respect of a telecommunications service—shall include a description of the service sufficient to identify it, including—
  - (i) the name, address and occupation of the subscriber (if any) to the service; and
  - (ii) the number (if any) allotted to the service by the Commission; and
- (b) shall specify the facts and other grounds on which the Director-General of Security considers it necessary that the warrant should be issued.

“(3) Where a warrant under this section authorises entry on premises, the warrant shall state whether entry is authorised to be made at any time of the day or night or only during specified hours and may, if the Attorney-General thinks fit, provide that entry may be made without permission first being sought or demand first being made, and authorise measures that the Attorney-General is satisfied are necessary for that purpose.

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“(4) A warrant under this section shall specify the period for which it is to remain in force, being a period not exceeding 6 months, but may be revoked by the Attorney-General at any time before the end of the period so specified.

“(5) Sub-section (4) shall not be construed as preventing the issue of a further warrant in respect of a telecommunications service in relation to which a warrant has, or warrants have, previously been issued or in respect of a person in relation to whom a warrant has, or warrants have, previously been issued.

“(6) The authority conferred on the Commission by a warrant issued under this section to do acts or things referred to in sub-section 11 (1) may be exercised only by—

- (a) the Managing Director of the Commission; and
- (b) officers of the Commission approved, for the purposes of that warrant or of warrants issued under this section, by the Managing Director of the Commission or by an officer of the Commission appointed by the Managing Director of the Commission, in writing, to be an authorising officer of the Commission for the purposes of this section.

“(7) Nothing in the *Telecommunications Act 1975* shall be taken to prohibit the doing of anything pursuant to, or for the purposes of, a warrant under this section.

“(8) The Director-General shall not request the issue of a warrant under this section for the purpose of collecting information concerning an Australian citizen or permanent resident.

“(9) The reference in sub-section (1) to conditions or restrictions includes a reference to conditions or restrictions designed to minimise the obtaining by the Organization, pursuant to a warrant issued under this section, of information that is not publicly available concerning Australian citizens or permanent residents, or to minimise the retention of information of that kind.”.

**Persons authorised to intercept communications for Organization**

**29. Section 12 of the Principal Act is amended—**

- (a) by omitting “a particular warrant, or by warrants, issued under any of the following sections, namely, section 9 or 10” and substituting “relevant warrants”; and
- (b) by adding at the end the following sub-section:
  - “(2) In sub-section (1), ‘relevant warrant’ means—
  - (a) a warrant issued under section 9 or 10; or
  - (b) a warrant issued under section 11A authorising the doing of acts or things referred to in sub-section 9 (1).”.

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**Discontinuance of interception before expiration of warrant**

**30.** Section 13 of the Principal Act is amended by omitting “or 11” and substituting “, 11 or 11A”.

**31.** Section 14 of the Principal Act is repealed and the following section is substituted:

**Certain records retained by Organization to be destroyed**

“14. Where—

- (a) a record or copy has been made of a communication intercepted by virtue of a warrant issued under section 9, 10 or 11A or a copy of a telegram has been made by virtue of a warrant issued under section 11 or 11A;
- (b) the record or copy is in the possession or custody, or under the control, of the Organization; and
- (c) the Director-General of Security is satisfied that the record or copy is not required, and is not likely to be required, in or in connection with the performance by the Organization of its functions or the exercise of its powers (including the powers conferred on it by sub-section 7 (5)),

the Director-General of Security shall cause the record or copy to be destroyed.”.

**Manner in which warrants, &c., to be dealt with**

**32.** Section 15 of the Principal Act is amended—

- (a) by inserting in sub-section (1) “or issues a warrant under section 11A authorising the doing of acts or things referred to in sub-section 9 (1) or revokes such a warrant” after “9 or 10”; and
- (b) by inserting in sub-section (2) “or issues a warrant under section 11A authorising the doing of acts or things referred to in sub-section 11 (1) or revokes such a warrant” after “under that section”.

**Obstruction**

**33.** Section 16 of the Principal Act is amended by omitting “or 11” and substituting “, 11 or 11A”.

**Reports to be made to Attorney-General on results of interception**

**34.** Section 17 of the Principal Act is amended—

- (a) by omitting “or 11” and substituting “11 or 11A”; and
- (b) by omitting “of obtaining intelligence relevant to security”.

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**NOTES**

1. No. 59, 1977, as amended. For previous amendments, see No. 66, 1978; No. 111, 1980; Nos. 111, 115, 122, 137, 140 and 153, 1982; Nos. 62 and 144, 1983; Nos. 76, 159 and 164, 1984; and Nos. 4, 47 and 65, 1985.
2. No. 79, 1983, as amended. For previous amendments, see No. 165, 1984.
3. No. 4, 1901, as amended. For previous amendments, see No. 8, 1906; No. 4, 1909; No. 6, 1912; No. 32, 1917; No. 23, 1920; No. 34, 1924; No. 18, 1926; No. 45, 1934; No. 52, 1947; No. 60, 1948; No. 51, 1950; No. 79, 1952; No. 12, 1953; No. 29, 1954; No. 18, 1955; No. 39, 1957; No. 8, 1959; Nos. 17 and 77, 1960; No. 89, 1961; No. 74, 1962; No. 75, 1964; No. 126, 1965; No. 93, 1966; No. 120, 1968; No. 20, 1969; No. 216, 1973; No. 56, 1975; No. 36, 1978; Nos. 8 and 155, 1979; Nos. 74 and 176, 1981; Nos. 26 and 80, 1982; No. 62, 1983; Nos. 40 and 63, 1984; and Nos. 65, 166 and 187, 1985.
4. No. 12, 1914, as amended. For previous amendments, see No. 6, 1915; No. 54, 1920; No. 9, 1926; No. 13, 1928; No. 30, 1932; No. 5, 1937; No. 6, 1941; No. 77, 1946; No. 80, 1950; No. 10, 1955; No. 11, 1959; No. 84, 1960; No. 93, 1966; Nos. 33 and 216, 1973; No. 56, 1975; Nos. 19 and 155, 1979; No. 70, 1980; No. 122, 1981; Nos. 67, 80 and 153, 1982; Nos. 91, 114 and 136, 1983; Nos. 10, 63 and 165, 1984; and No. 193, 1985.
5. No. 3, 1982, as amended. For previous amendments, see Nos. 7 and 81, 1983; No. 63, 1984; and No. 187, 1985.
6. No. 24, 1981, as amended. For previous amendments, see No. 63, 1984.
7. No. 62, 1958, as amended. For previous amendments, see No. 62, 1958; No. 87, 1964; No. 10, 1966; Nos. 16 and 216, 1973; Nos. 37 and 91, 1976; Nos. 117 and 118, 1979; Nos. 89 and 175, 1980; No. 61, 1981; No. 51, 1982; Nos. 73 and 112, 1983; and Nos. 22, 72 and 123, 1984.
8. No. 114, 1979, as amended. For previous amendments, see No. 181, 1979; Nos. 114 and 116, 1983; Nos. 6 and 116, 1984; and Nos. 8 and 63, 1985.

*[Minister's second reading speech made in—  
House of Representatives on 22 May 1986  
Senate on 11 June 1986]*