



Telecommunications Interception and Intelligence Services Legislation Amendment Act 2011

No. 4, 2011

**An Act to amend the law relating to
telecommunications interception and access, and
intelligence services, and for related purposes**

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No. 4, 2011

**An Act to amend the law relating to
telecommunications interception and access, and
intelligence services, and for related purposes**

[Assented to 22 March 2011]

The Parliament of Australia enacts:

1 Short title

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

Telecommunications Interception and Intelligence Services Legislation Amendment Act 2011

No. 4, 2011 1

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Each Act that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.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

Telecommunications (Interception and Access) Act 1979

1 Paragraph 52(1)(a)

Omit “forthwith”, substitute “immediately”.

2 Subsection 52(2)

Omit “cause a copy of the instrument of revocation to be given as soon as practicable”, substitute “, as soon as practicable, give a copy of the instrument of revocation”.

3 Subsection 52(3)

Repeal the subsection, substitute:

(3) If:

- (a) a warrant has been issued to an agency; and
- (b) another agency or the Organisation is exercising authority under that warrant (see section 55); and
- (c) the warrant is revoked under subsection (1);

the chief officer of the agency to which the warrant was issued must:

- (d) immediately inform the chief officer of the other agency or the Director-General of Security (as the case requires) of the revocation; and
- (e) give a copy of the instrument of revocation to the person referred to in paragraph (d) as soon as practicable.

4 Subsection 55(1)

Omit “an officer or staff member of an agency”, substitute “a person”.

5 Subsection 55(3)

Repeal the subsection, substitute:

- (3) The chief officer of an agency, or an officer of an agency in relation to whom an appointment under subsection (4) is in force,

may approve any of the following persons to exercise the authority conferred by warrants (or classes of warrants) issued to the agency:

- (a) officers (or classes of officers) of the agency or another agency;
- (b) staff members (or classes of staff members) of the agency or another agency;
- (c) officers or employees (or classes of officers or employees) of the Organisation;
- (d) persons assisting the Organisation in the performance of its functions.

6 Subsection 55(5)

Omit “an officer or staff member of an agency”, substitute “a person”.

7 At the end of section 55

Add:

- (8) To avoid doubt, the Organisation exercises authority under a warrant even if a person assisting the Organisation in the performance of its functions, who is not an officer or employee of the Organisation, is approved to exercise that authority under paragraph (3)(d).

8 Subsections 57(1), (2) and (3)

Repeal the subsections, substitute:

- (1) The chief officer of an agency:
 - (a) may, at any time, by signed writing, revoke a warrant issued to the agency; and
 - (b) must do so, if he or she is satisfied that the grounds on which the warrant was issued to the agency have ceased to exist.
- (2) If another agency or the Organisation is exercising authority under the warrant, then before revoking the warrant, the chief officer must inform the chief officer of the other agency or the Director-General of Security (as the case requires) of the proposed revocation.
- (3) After revoking the warrant, the chief officer must:

- (a) if subsection (2) applies—immediately inform the chief officer of the other agency or the Director-General of Security (as the case requires) of the revocation; and
- (b) in any case—give a copy of the instrument of revocation to the Secretary of the Department as soon as practicable.

9 Subsection 57(4)

Omit “subsection (2)”, substitute “paragraph (1)(a)”.

10 Subsection 58(1)

Omit “forthwith”, substitute “immediately”.

11 Subsection 58(2)

After “agency” (first occurring), insert “or the Director-General of Security”.

12 Subsection 58(2)

Omit “the chief officer of the agency shall forthwith”, substitute “he or she must immediately”.

13 Subsection 58(2)

After “agency” (third occurring), insert “or the Organisation (as the case requires)”.

14 Section 59

Omit “or (2)”.

15 Paragraphs 60(1)(c), (3)(c) and (5)(c)

Omit “forthwith”, substitute “immediately”.

16 After subsection 61(4)

Insert:

- (4A) A certifying person may issue a written certificate signed by him or her setting out such facts as he or she considers relevant with respect to:
 - (a) anything done by a person referred to in paragraph 55(3)(c) or (d) in connection with the execution of a Part 2-5 warrant;
 - or

- (b) anything done by a person referred to in paragraph 55(3)(c) or (d) in connection with:
 - (i) the communication by a person to another person of; or
 - (ii) the making use of; or
 - (iii) the making of a record of; or
 - (iv) the custody of a record of; or
 - (v) the giving in evidence of;information obtained by the execution of such a warrant.

17 Subsection 61(5)

Repeal the subsection, substitute:

- (5) A document purporting to be a certificate issued under subsection (4) or (4A) by a certifying officer of an agency, or a certifying person, and to be signed by him or her:
 - (a) is to be received in evidence in an exempt proceeding without further proof; and
 - (b) in an exempt proceeding, is prima facie evidence of the matters stated in the document.

18 At the end of section 64

Add:

- (3) Subsections (1) and (2) do not apply to information:
 - (a) obtained by a person referred to in paragraph 55(3)(c) or (d) by intercepting a communication when exercising authority under a warrant issued to an agency; or
 - (b) communicated, in accordance with section 66, to a person referred to in paragraph 55(3)(c); or
 - (c) that is interception warrant information in relation to a warrant issued to an agency;unless the information has been communicated to the Director-General of Security under section 68.
- (4) However, a person referred to in paragraph 55(3)(c) or (d) may communicate to another person, make use of, or make a record of information referred to in paragraph (3)(a), (b) or (c) of this section, that has not been communicated to the Director-General of Security under section 68, for a purpose or purposes connected

with the investigation to which the warrant, under which the information was obtained, relates, and for no other purpose.

19 At the end of section 65

Add:

- (3) Subsections (1) and (2) do not apply to information:
- (a) obtained by a person referred to in paragraph 55(3)(c) or (d) by intercepting a communication when exercising authority under a warrant issued to an agency; or
 - (b) communicated, in accordance with section 66, to a person referred to in paragraph 55(3)(c); or
 - (c) that is interception warrant information in relation to a warrant issued to an agency;

unless the information has been communicated to the Director-General of Security under section 68.

Note: See subsection 64(4) for when the Director-General of Security may communicate information, referred to in paragraph (3)(a), (b) or (c) of this section, that has not been communicated under section 68.

20 Paragraph 66(1)(b)

Repeal the paragraph, substitute:

- (b) a person in relation to whom an authorisation under subsection (2) is in force in relation to the warrant.

Note: The heading to section 66 is altered by omitting “**agency to which warrant was issued**” and substituting “**officer who applied for warrant or authorised person**”.

21 Subsection 66(2)

Repeal the subsection, substitute:

- (2) The chief officer of an agency, or an authorising officer of an agency for whom an appointment under subsection (4) is in force, may authorise in writing a person (or class of person) referred to in any of paragraphs 55(3)(a) to (c) to receive information obtained by interceptions under warrants (or classes of warrants) issued to the agency.
- (3) The chief officer, or an authorising officer, of an agency may make an authorisation under subsection (2) in relation to a person (or class of person) who is not an officer or staff member of that

agency only for a purpose or purposes connected with an investigation to which a warrant issued to that agency relates.

- (4) The chief officer of an agency may appoint in writing an officer of the agency to be an authorising officer for the purposes of this section.

22 After subsection 67(1)

Insert:

- (1A) Subsection (1) does not apply to information:

- (a) obtained by an officer or staff member of an agency by intercepting a communication when exercising authority under a warrant issued to another agency; or
- (b) communicated to an officer or staff member of an agency in accordance with section 66, where the information was obtained by intercepting a communication under a warrant issued to another agency; or
- (c) that is interception warrant information in relation to a warrant issued to another agency;

unless the information has been communicated to an officer of the agency under section 68.

- (1B) However, an officer or staff member of an agency may communicate to another person, make use of, or make a record of information referred to paragraph (1A)(a), (b) or (c), that has not been communicated to an officer of the agency under section 68, for a purpose or purposes connected with the investigation to which the warrant, under which the information was obtained, relates, and for no other purpose.

23 After subsection 81(2)

Insert:

- (2A) If:

- (a) the Organisation is exercising the authority conferred by a Part 2-5 warrant issued to a Commonwealth agency; and
- (b) the Commonwealth agency does not have the particulars referred to in subparagraph (1)(c)(ii), (iii) or (iv), or paragraph (1)(d);

the Director-General of Security must:

- (c) cause those particulars to be recorded in accordance with subsections (1) and (2); and
- (d) give the records produced to the chief officer of the Commonwealth agency to which the Part 2-5 warrant was issued.

24 Subsection 81(3)

After “caused to be made”, insert “, or is given,”.

25 After section 81

Insert:

81AA Organisation to record particulars in relation to eligible authorities of a State

If:

- (a) the Organisation is exercising the authority conferred by a Part 2-5 warrant issued to an eligible authority of a State; and
- (b) the eligible authority does not have the particulars referred to in subparagraph 81(1)(c)(ii), (iii) or (iv), or paragraph 81(1)(d);

the Director-General of Security must:

- (c) cause those particulars to be recorded in accordance with subsections 81(1) and (2); and
- (d) give the records produced to the chief officer of the eligible authority to which the Part 2-5 warrant was issued.

26 After paragraph 103(ac)

Insert:

- (aca) the number (if any) of interceptions carried out by the Organisation on behalf of:
 - (i) each Commonwealth agency; and
 - (ii) each eligible authority of a State, where the eligible authority was an agency at any time during the year to which the report relates; and

27 Subsections 127(1) and (2)

Repeal the subsections, substitute:

- (1) The authority conferred by a stored communications warrant may only be exercised by a person in relation to whom an approval under subsection (2) is in force in relation to the warrant.
- (2) The chief officer of an enforcement agency, or an officer of an enforcement agency in relation to whom an appointment under subsection (3) is in force, may approve any of the following persons to exercise the authority conferred by warrants (or classes of warrants) issued to the agency:
 - (a) officers (or classes of officers) of the agency or another enforcement agency;
 - (b) staff members (or classes of staff members) of the agency or another enforcement agency.

28 Saving provision in relation to items 5 and 27

The amendments made by items 5 and 27 of this Schedule do not affect the validity of any approval given under subsection 55(3) or 127(2) of the *Telecommunications (Interception and Access) Act 1979* before this Schedule commences.

29 Saving provision in relation to item 9

- (1) This item applies to a delegation if:
 - (a) the delegation was made under subsection 57(4) of the *Telecommunications (Interception and Access) Act 1979* in relation to the power of the chief officer of an agency to revoke a warrant under subsection 57(2) of that Act; and
 - (b) the delegation was in force immediately before this Schedule commences.
- (2) The delegation has effect, after this Schedule commences, as if it had been made under subsection 57(4) of that Act in relation to the power of the chief officer of the agency to revoke a warrant under paragraph 57(1)(a) of that Act, as amended by this Act.

Schedule 2—Requirement to inform of proposed changes

Telecommunications (Interception and Access) Act 1979

1 Subsection 5(1)

Insert:

carriage service provider has the meaning given by the *Telecommunications Act 1997*.

2 Subsection 5(1) (definition of *carrier*)

Repeal the definition, substitute:

carrier means:

- (a) except in Parts 5-4 and 5-4A:
 - (i) a carrier (within the meaning of the *Telecommunications Act 1997*); or
 - (ii) a carriage service provider; and
- (b) in Parts 5-4 and 5-4A—a carrier (within the meaning of the *Telecommunications Act 1997*).

3 Subsection 5(1)

Insert:

nominated carriage service provider means a carriage service provider covered by a declaration in force under subsection 197(4).

4 Subsection 5(1)

Insert:

notifiable equipment, in relation to a carrier or nominated carriage service provider, means equipment that:

- (a) provides all or part of the carrier or provider's telecommunication services; or
- (b) manages all or part of the provision of the carrier or provider's telecommunication services; or

- (c) manages some or all of the information to which section 276 of the *Telecommunications Act 1997* applies in relation to the carrier or provider.

5 Chapter 5 (heading)

Repeal the heading, substitute:

Chapter 5—Co-operation with agencies

6 Section 194

Repeal the section.

7 Subsection 197(4)

After “Part”, insert “and Part 5-4A”.

8 After Part 5-4

Insert:

Part 5-4A—Requirement arising from proposed changes

202A Purpose of Part

The purpose of this Part is:

- (a) to require carriers and nominated carriage service providers to give notice of the particulars of any change that is proposed in relation to a telecommunications service or a telecommunications system, whose implementation may affect the capacity of the carrier or provider to comply with its obligations under:
 - (i) this Act; or
 - (ii) section 313 of the *Telecommunications Act 1997*; and
- (b) to allow the Communications Access Co-ordinator to notify agencies of such proposed changes.

202B Carrier or provider to notify of proposed change

- (1) This section applies if, at any time, a carrier or a nominated carriage service provider becomes aware that the implementation by the carrier or provider of a change that is proposed to a telecommunications service or a telecommunications system is likely to have a material adverse effect on the capacity of the carrier or provider to comply with its obligations under:
 - (a) this Act; or
 - (b) section 313 of the *Telecommunications Act 1997*.
- (2) A change to a telecommunications service or a telecommunications system includes (but is not limited to) the following:
 - (a) the carrier or carriage service provider providing one or more new telecommunication services;
 - (b) the carrier or carriage service provider changing the location of notifiable equipment (including moving equipment outside Australia);
 - (c) the carrier or carriage service provider procuring notifiable equipment (including procuring equipment that is located outside Australia);
 - (d) the carrier or carriage service provider entering into outsourcing arrangements:
 - (i) to have all or part of the telecommunication services provided for the carrier or provider; or
 - (ii) to have all or part of the provision of telecommunication services managed for the carrier or provider; or
 - (iii) to have all or some information to which section 276 of the *Telecommunications Act 1997* applies in relation to the carrier or provider, managed for the carrier or provider;
 - (e) the carrier or carriage service provider entering into arrangements to have all or some information to which section 276 of the *Telecommunications Act 1997* applies in relation to the carrier or provider accessed by persons outside Australia.
- (3) The carrier or provider must notify the Communications Access Co-ordinator, in writing, of its intention to implement the proposed change.

- (4) A notification provided under subsection (3) must include a description of the proposed change.
- (5) After notifying the Communications Access Co-ordinator of a proposed change, the carrier or provider may implement the change if the carrier or provider has not been notified in writing by the Co-ordinator within 30 days after the day the carrier or provider notifies the Co-ordinator.
- (6) If:
 - (a) the Communications Access Co-ordinator notifies the carrier or provider in writing within 30 days after the day the carrier or provider notifies the Co-ordinator; and
 - (b) within 30 days after the Co-ordinator so notifies the carrier or provider, the Co-ordinator makes a determination under section 203 that applies to the carrier or provider;the carrier or provider must not implement the proposed change until the carrier or provider has complied with the determination.
- (7) To avoid doubt, subsection (6) does not prevent the Communications Access Co-ordinator from making a determination under section 203, that applies to the carrier or provider, more than 30 days after the Co-ordinator first notifies the carrier or provider in writing as mentioned in paragraph (6)(a).

202C Communications Access Co-ordinator may notify agencies

- (1) After the Communications Access Co-ordinator has been notified by a carrier or nominated carriage service provider of an intention to implement a proposed change, the Co-ordinator may notify agencies that are likely to be interested of the proposed change.
- (2) On receiving notification from a carrier or provider of an intention to implement a proposed change, the Communications Access Co-ordinator, and each agency that receives notification of the proposed change, must treat the proposed change as confidential.

9 Application of this Schedule

The amendments made by this Schedule apply in relation to changes that are proposed, after this Schedule commences, to telecommunications services or telecommunications systems.

Schedule 3—Disclosure of telecommunications data relating to missing persons

Telecommunications (Interception and Access) Act 1979

1 Subsection 5(1)

Insert:

missing person information, in relation to a missing person, has the meaning given by section 182.

2 Subsection 5(1)

Insert:

non-missing person information has the meaning given by section 182.

3 After section 178

Insert:

178A Authorisations for access to existing information or documents—locating missing persons

- (1) Sections 276, 277 and 278 of the *Telecommunications Act 1997* do not prevent a disclosure of information or a document if the information or document is covered by an authorisation in force under subsection (2).
- (2) An authorised officer of the Australian Federal Police, or a Police Force of a State, may authorise the disclosure of specified information or specified documents that came into existence before the time the person from whom the disclosure is sought receives notification of the authorisation.

Note: Section 184 deals with notification of authorisations.

- (3) The authorised officer must not make the authorisation unless he or she is satisfied that the disclosure is reasonably necessary for the

purposes of finding a person who the Australian Federal Police, or a Police Force of a State, has been notified is missing.

4 Subsection 182(2)

Omit “information or a document”, substitute “non-missing person information”.

5 After subsection 182(2)

Insert:

- (2A) Paragraph (1)(b) does not apply to a disclosure of missing person information in relation to a missing person if:
- (a) the disclosure is reasonably necessary for the purposes of finding the missing person; or
 - (b) the information is disclosed to the person who notified the Australian Federal Police, or a Police Force of a State, of the missing person and:
 - (i) the missing person consented to the disclosure; or
 - (ii) the missing person is unable to consent, and the disclosure is reasonably necessary to prevent a threat to the missing person’s health, life or safety; or
 - (iii) the missing person is dead.

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

6 Subsection 182(3)

Omit “information or a document”, substitute “non-missing person information”.

7 At the end of section 182

Add:

- (4) Paragraph (1)(b) does not apply to a use of missing person information in relation to a missing person if the use is reasonably necessary for the purposes of finding the missing person.

Note: A defendant bears an evidential burden in relation to the matter in subsection (4) (see subsection 13.3(3) of the *Criminal Code*).

- (5) In this Act:

missing person information, in relation to a missing person, means information or a document that is disclosed under section 178A (locating missing persons) in relation to the person who the Australian Federal Police, or a Police Force of a State, has been notified is missing.

non-missing person information means information or a document that is disclosed as permitted by Division 4, but not under section 178A (locating missing persons).

8 After paragraph 186(1)(a)

Insert:

- (aa) the number of authorisations made under section 178A by an authorised officer of the enforcement agency during that year; and

9 Application of this Schedule

The amendments made by this Schedule apply in relation to:

- (a) information or documents that come into existence before or after this Schedule commences; and
- (b) persons who the Australian Federal Police, or a Police Force of a State, are notified are missing before or after this Schedule commences.

Schedule 4—Stored communications warrants in relation to victims of serious contraventions

Telecommunications (Interception and Access) Act 1979

1 Paragraph 116(1)(d)

After “involved”, insert “(including as a victim of the serious contravention)”.

2 After paragraph 116(1)(d)

Insert:

- (da) if the stored communications warrant is applied for in relation to a person who is the victim of the serious contravention—the person is unable to consent, or it is impracticable for the person to consent, to those stored communications being accessed; and

3 Paragraph 116(1)(e)

Before “having”, insert “in any case—”.

4 Application of this Schedule

The amendments made by this Schedule apply to applications for stored communications warrants made after this Schedule commences, whether:

- (a) the conduct constituting the serious contraventions concerned is engaged in before or after this Schedule commences; and
- (b) the information to be accessed by the warrants is first held on equipment before or after this Schedule commences.

Schedule 5—Notifying Managing Directors of warrants

Telecommunications (Interception and Access) Act 1979

1 Subsection 5(1)

Insert:

authorised representative of a carrier means one of the following persons:

- (a) the Managing Director of the carrier;
- (b) the secretary of the carrier;
- (c) an employee of the carrier authorised in writing for the purposes of this paragraph by the Managing Director or the secretary of the carrier.

2 Paragraph 15(1A)(c)

Omit “the Managing Director”, substitute “an authorised representative”.

3 Paragraph 15(1A)(d)

Omit “the Managing Director of that carrier”, substitute “that authorised representative”.

4 Paragraph 15(1B)(a)

Omit “the Managing Director”, substitute “an authorised representative”.

5 Paragraphs 15(1B)(c) and (d)

Omit “the Managing Director of that carrier”, substitute “that authorised representative”.

6 Paragraph 15(4)(c)

Omit “the Managing Director”, substitute “an authorised representative”.

7 Paragraph 15(4)(d)

Omit “the Managing Director of that carrier”, substitute “that authorised representative”.

8 Paragraph 15(7)(c)

Omit “the Managing Director”, substitute “an authorised representative”.

9 Paragraph 15(7)(d)

Omit “the Managing Director of that carrier”, substitute “that authorised representative”.

10 Paragraph 16(1)(a)

Omit “the Managing Director”, substitute “an authorised representative”.

11 Subsection 16(1)

Omit “the Managing Director of the carrier”, substitute “that authorised representative”.

12 Paragraph 16(1A)(a)

Omit “the Managing Director”, substitute “an authorised representative”.

13 Subsection 16(1A)

Omit “the Managing Director of the carrier”, substitute “that authorised representative”.

14 Paragraph 16(2)(a)

Omit “the Managing Director”, substitute “an authorised representative”.

15 Paragraphs 16(2)(c) and (d)

Omit “the Managing Director”, substitute “that authorised representative”.

16 Paragraph 47(a)

Omit “by or on behalf of the Managing Director”, substitute “by an authorised representative”.

17 Paragraph 60(1)(c)

Omit “the Managing Director”, substitute “an authorised representative”.

Note: The heading to section 60 is altered by omitting “**Managing Director**” and substituting “**authorised representative**”.

18 Paragraph 60(1)(d)

Omit “the Managing Director of that carrier”, substitute “that authorised representative”.

19 Paragraph 60(3)(a)

Omit “the Managing Director”, substitute “an authorised representative”.

20 Paragraphs 60(3)(c) and (d)

Omit “the Managing Director of that carrier”, substitute “that authorised representative”.

21 Paragraph 60(4)(a)

Omit “the Managing Director”, substitute “an authorised representative”.

22 Subsection 60(4)

Omit “the Managing Director of the carrier”, substitute “that authorised representative”.

23 Paragraph 60(4A)(a)

Omit “the Managing Director”, substitute “an authorised representative”.

24 Subsection 60(4A)

Omit “the Managing Director of the carrier”, substitute “that authorised representative”.

25 Paragraph 60(5)(a)

Omit “the Managing Director”, substitute “an authorised representative”.

26 Paragraphs 60(5)(c) and (d)

Omit “the Managing Director”, substitute “that authorised representative”.

27 Paragraph 121(a)

Omit “the Managing Director”, substitute “an authorised representative”.

28 Paragraph 121(b)

Omit “the Managing Director of that carrier”, substitute “that authorised representative”.

29 Subsection 123(2)

Omit “the Managing Director” (first occurring), substitute “an authorised representative”.

30 Paragraph 123(2)(a)

Omit “the Managing Director of the carrier”, substitute “that authorised representative”.

31 Paragraph 123(2)(b)

Omit “the Managing Director”, substitute “that authorised representative”.

32 Paragraph 124(1)(a)

Omit “the Managing Director”, substitute “an authorised representative”.

33 Subsection 124(1)

Omit “the Managing Director of the carrier”, substitute “that authorised representative”.

34 Paragraph 124(2)(a)

Omit “the Managing Director”, substitute “an authorised representative”.

35 Paragraphs 124(2)(c) and (d)

Omit “the Managing Director”, substitute “that authorised representative”.

36 Section 126

Omit “by or on behalf of the Managing Director”, substitute “by an authorised representative”.

37 Application of Schedule

The amendments made by this Schedule apply in relation to:

- (a) warrants issued before this Schedule commences, if the Managing Director of the relevant carrier is not informed of the issue or revocation of the warrant (as the case requires) under section 15, 60, 121 or 123 of the *Telecommunications (Interception and Access) Act 1979* before this Schedule commences; and
- (b) warrants issued after this Schedule commences.

Schedule 6—Co-operation, assistance and communication between intelligence agencies

Australian Security Intelligence Organisation Act 1979

1 Section 4

Insert:

ASIS has the meaning given by the *Intelligence Services Act 2001*.

2 Section 4 (after paragraph (a) of the definition of *authority of the Commonwealth*)

Insert:

(aa) a Department within the meaning of the *Parliamentary Service Act 1999*;

3 Section 4 (paragraph (f) of the definition of *authority of the Commonwealth*)

Repeal the paragraph, substitute:

(f) a body corporate in which the Commonwealth or a body referred to in paragraph (c) has a controlling interest.

4 Section 4

Insert:

authority of a State:

(a) in Part IV—has the meaning given by subsection 35(1); and

(b) otherwise—includes:

(i) a Department of State of a State, or a Department of the Public Service of a State; and

(ii) a body, whether incorporated or not, established for public purposes by or under a law of a State; and

(iii) a body corporate in which a State or a body referred to in subparagraph (ii) has a controlling interest.

5 Section 4

Insert:

DIGO has the meaning given by the *Intelligence Services Act 2001*.

6 Section 4

Insert:

DSD has the meaning given by the *Intelligence Services Act 2001*.

7 Section 4

Insert:

law enforcement agency means an authority of the Commonwealth, or an authority of a State, that has functions relating to law enforcement.

8 Section 4

Insert:

serious crime means conduct that, if engaged in within, or in connection with, Australia, would constitute an offence against the law of the Commonwealth, a State or a Territory punishable by imprisonment for a period exceeding 12 months.

9 Section 4

Insert:

staff member of a body (however described) includes:

- (a) the head (however described) of the body, or another person who holds an office or appointment in relation to the body; and
- (b) a person who is otherwise a member of the staff of the body (whether an employee of the body, a consultant or contractor to the body, or a person who is made available by an authority of the Commonwealth, an authority of a State, or other person, to perform services for the body).

10 Paragraph 17(1)(b)

Omit “and not otherwise”.

11 At the end of subsection 17(1)

Add:

- ; and (f) to co-operate with and assist bodies referred to in section 19A in accordance with that section.

12 Subsection 18(3)

Repeal the subsection, substitute:

Communicating information to appropriate authorities of the Commonwealth or a State

- (3) A person referred to in subsection (1) may communicate information to a person referred to in subsection (4) if:
 - (a) the information has come into the possession of the Organisation in the course of performing the Organisation's functions under section 17; and
 - (b) either:
 - (i) the information relates, or appears to relate, to the commission, or intended commission, of a serious crime; or
 - (ii) the Director-General, or a person authorised for the purpose by the Director-General, is satisfied that the national interest requires the communication; and
 - (c) the information relates, or appears to relate, to the performance of the functions, responsibilities or duties of the person referred to in subsection (4).

Note: There are additional restrictions, in the *Telecommunications (Interception and Access) Act 1979*, on communicating telecommunications information.

- (4) The persons to whom information may be communicated under subsection (3) are the following:
 - (a) a Minister;
 - (b) a staff member of an authority of the Commonwealth;
 - (c) a staff member of an authority of a State.

Communicating information to ASIS, DSD and DIGO

- (4A) A person referred to in subsection (1) may communicate information to a staff member of ASIS, DSD or DIGO if:

- (a) the information has come into the possession of the Organisation in the course of performing the Organisation's functions under section 17; and
- (b) the information relates, or appears to relate, to the performance of ASIS, DSD or DIGO's functions (as the case requires).

Communicating information in relation to emergency declarations

- (4B) A person referred to in subsection (1) may communicate information, in accordance with Part VIA of the *Privacy Act 1988*, if:
- (a) the information has come into the possession of the Organisation in the course of performing its functions under section 17; and
 - (b) an emergency declaration (within the meaning of section 80G of that Act) is in force.

Note 1: The following heading to subsection 18(1) is inserted "*Who may communicate intelligence*".

Note 2: The following heading to subsection 18(2) is inserted "*Offence for unauthorised communication of information*".

Note 3: The following heading to subsection 18(5) is inserted "*Attorney-General's consent required for prosecution of offence*".

13 Subsection 18(6)

Repeal the subsection.

14 Subsection 19(1)

Omit "its" (first occurring), substitute "the Organisation's".

Note: The heading to section 19 is altered by adding at the end "**in connection with performance of Organisation's functions**".

15 Subsection 19(2)

Omit "Notwithstanding paragraph 17(1)(b), the Director-General or an officer authorised by the Director-General", substitute "A person referred to in subsection 18(1)".

16 At the end of subsection 19(2)

Add:

Note: There are additional restrictions, in the *Telecommunications (Interception and Access) Act 1979*, on communicating telecommunications information.

17 After section 19

Insert:

19A Co-operation with intelligence and law enforcement agencies etc. in connection with performance of their functions

- (1) The Organisation may co-operate with and assist the following bodies in the performance of their functions:
 - (a) ASIS;
 - (b) DSD;
 - (c) DIGO;
 - (d) a law enforcement agency;
 - (e) an authority of the Commonwealth, or an authority of a State, that is prescribed by the regulations for the purposes of this paragraph.
- (2) However, the Organisation may only do so:
 - (a) subject to any arrangements made or directions given by the Minister; and
 - (b) on request by the head (however described) of the body referred to in subsection (1).
- (3) Without limiting subsection (1), in co-operating with and assisting a body in accordance with this section, the Organisation may make the services of officers and employees, and other resources, of the Organisation available to the body.

Communicating information

- (4) A person referred to in subsection 18(1) may communicate information to a staff member of a body referred to in paragraph (1)(d) or (e) if:
 - (a) the information has come into the possession of the Organisation in the course of performing the Organisation's functions under section 17; and
 - (b) the information is communicated for the purposes of co-operating with or assisting the body under this section.

Note 1: For communication of information to ASIS, DSD and DIGO, see subsection 18(4A).

Note 2: There are additional restrictions, in the *Telecommunications (Interception and Access) Act 1979*, on communicating telecommunications information.

Intelligence Services Act 2001

18 Section 3 (paragraph (a) of the definition of *incidentally obtained intelligence*)

After “subsection 6(1)”, insert “(other than intelligence obtained solely in the course of obtaining intelligence under paragraph 6(1)(da))”.

19 Section 3 (at the end of paragraph (a) of the definition of *intelligence information*)

Add “(other than information obtained solely under paragraph 6(1)(da))”.

20 After paragraph 6(1)(d)

Insert:

(da) to co-operate with and assist bodies referred to in section 13A in accordance with that section; and

21 At the end of section 6B

Add:

; and (f) to co-operate with and assist bodies referred to in section 13A in accordance with that section.

22 At the end of section 7

Add:

; and (f) to co-operate with and assist bodies referred to in section 13A in accordance with that section.

23 Paragraph 11(2)(d)

Before “providing”, insert “performing the function set out in paragraph 6(1)(da) or”.

24 Paragraph 11(2)(e)

Omit “paragraph 6B(e)”, substitute “paragraphs 6B(e) and (f)”.

25 Paragraph 11(2)(f)

Omit “paragraph 7(e)”, substitute “paragraphs 7(e) and (f)”.

26 Subsection 11(3)

Omit “6B(b), (c), (d) and (e) and 7(c), (d) and (e)”, substitute “6(1)(da), 6B(b), (c), (d), (e) and (f), and 7(c), (d), (e) and (f)”.

27 After section 13

Insert:

13A Co-operation with intelligence agencies etc. in connection with performance of their functions

- (1) An agency may co-operate with and assist the following bodies in the performance of their functions:
 - (a) another agency;
 - (b) ASIO;
 - (c) a Commonwealth authority, or a State authority, that is prescribed by the regulations for the purposes of this paragraph.
- (2) However, the agency may only do so:
 - (a) subject to any arrangements made or directions given by the responsible Minister; and
 - (b) on request by the head (however described) of the body referred to in subsection (1).

Note: The Inspector-General of Intelligence and Security has oversight powers in relation to Ministerial directions and authorisations given under this Act. See in particular section 32B of the *Inspector-General of Intelligence and Security Act 1986* (which requires the Minister to give a copy of a direction under this section to the Inspector-General of Intelligence and Security as soon as practicable after the direction is given).

- (3) Without limiting subsection (1), in co-operating with and assisting a body in accordance with this section, an agency may make the services of staff members, and other resources, of the agency available to the body.

Note: The heading to section 13 is altered by adding at the end “**in connection with performance of agency’s own functions**”.

Telecommunications (Interception and Access) Act 1979

28 Subsections 65(1) and 137(1)

Omit “paragraph 18(3)(a) or (b)”, substitute “subsection 18(3) or (4A), or subsection 19A(4)”.

29 Application of amendments relating to communication of information

Section 18 and subsection 19(2) of the *Australian Security Intelligence Organisation Act 1979*, as amended by this Schedule, and subsection 19A(4) of that Act, as inserted by this Schedule, apply in relation to any information, whether the information comes into the possession of the Organisation before or after this Schedule commences.

Schedule 7—Amendments to section 5 of the Telecommunications (Interception and Access) Act 1979

Telecommunications (Interception and Access) Act 1979

1 Subsection 5(1)

Insert:

Director-General of Security means the person holding, or performing the duties of, the office of Director-General of Security under the *Australian Security Intelligence Organisation Act 1979*.

2 Subsection 5(1) (paragraph (b) of the definition of enforcement agency)

Repeal the paragraph, substitute:

(b) a Police Force of a State; or

3 Subsection 5(1)

Insert:

member of the staff of the Police Integrity Commission means a person who is, for the purposes of the Police Integrity Commission Act, a member of the staff of the Commission.

4 Subsection 5(1) (definition of member of the staff of the Policy Integrity Commission)

Repeal the definition.

5 Subsection 5(1) (subparagraph (h)(ii) of the definition of officer)

Omit “Policy”, substitute “Police”.

6 Subsection 5(1)

Insert:

Organisation means the Australian Security Intelligence
Organisation.

7 Subsection 5(1) (definition of *the Director-General of Security*)

Repeal the definition.

8 Subsection 5(1) (definition of *the Organisation*)

Repeal the definition.

Schedule 8—Membership of Parliamentary Joint Committee on Intelligence and Security

Intelligence Services Act 2001

1 Subsection 28(2)

Repeal the subsection, substitute:

- (2) The Committee is to consist of 11 members, 5 of whom must be Senators and 6 of whom must be members of the House of Representatives.

2 Paragraph 8(1)(b) of Schedule 1

Repeal the paragraph, substitute:

- (b) either of the following happens before the Committee reports on the matter:
 - (i) the Committee as so constituted ceases to exist;
 - (ii) the constitution of the Committee changes;

3 Paragraph 18(1)(a) of Schedule 1

Omit “5”, substitute “6”.

4 Transitional—existing appointments not affected

The amendments made by this Schedule do not affect an appointment, made before the commencement of this item, of a Senator or member of the House of Representatives as a member of the Parliamentary Joint Committee on Intelligence and Security.

*[Minister's second reading speech made in—
House of Representatives on 30 September 2010
Senate on 25 October 2010]*

(206/10)

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