



# **Foreign Intelligence Legislation Amendment Act 2021**

**No. 95, 2021**

**An Act to amend the law relating to foreign  
intelligence, and for related purposes**

Note: An electronic version of this Act is available on the Federal Register of Legislation  
(<https://www.legislation.gov.au/>)



---

## Contents

1	Short title .....	1
2	Commencement .....	2
3	Schedules .....	2
4	Review .....	2
<b>Schedule 1—Section 11C foreign intelligence warrants</b>		<b>3</b>
	<i>Telecommunications (Interception and Access) Act 1979</i>	3
<b>Schedule 2—Australians or permanent residents acting for, or on behalf of, a foreign power</b>		<b>7</b>
	<i>Australian Security Intelligence Organisation Act 1979</i>	7
	<i>Telecommunications (Interception and Access) Act 1979</i>	7
<b>Schedule 3—Other amendments</b>		<b>10</b>
	<i>Telecommunications (Interception and Access) Act 1979</i>	10





# Foreign Intelligence Legislation Amendment Act 2021

No. 95, 2021

---

## An Act to amend the law relating to foreign intelligence, and for related purposes

[Assented to 2 September 2021]

The Parliament of Australia enacts:

### 1 Short title

This Act is the *Foreign Intelligence Legislation Amendment Act 2021*.

---

## 2 Commencement

- (1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

Commencement information		
Column 1	Column 2	Column 3
Provisions	Commencement	Date/Details
1. The whole of this Act	A single day to be fixed by Proclamation. However, if the provisions do not commence within the period of 6 months beginning on the day this Act receives the Royal Assent, they commence on the day after the end of that period.	21 December 2021 (F2021N00321)

Note: This table relates only to the provisions of this Act as originally enacted. It will not be amended to deal with any later amendments of this Act.

- (2) Any information in column 3 of the table is not part of this Act. Information may be inserted in this column, or information in it may be edited, in any published version of this Act.

## 3 Schedules

Legislation that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

## 4 Review

The Parliamentary Joint Committee on Intelligence and Security may, after the fifth anniversary of the day this Act receives the Royal Assent, commence a review of the operation, effectiveness and implications of the amendments made by this Act.

## **Schedule 1—Section 11C foreign intelligence warrants**

### ***Telecommunications (Interception and Access) Act 1979***

#### **1 Before subsection 11C(1)**

Insert:

*Issue of warrant*

#### **2 Paragraph 11C(1)(a)**

Omit “foreign communications for the purpose of obtaining foreign intelligence relating to a matter specified in the notice”, substitute “communications for the purpose of obtaining foreign intelligence relating to a matter specified in the notice from foreign communications intercepted under the warrant”.

#### **3 Subparagraph 11C(1)(b)(ii)**

Omit “foreign communications in order to collect the intelligence referred to in paragraph (a)”, substitute “communications in order to obtain that foreign intelligence from foreign communications intercepted under the warrant”.

#### **4 Subsection 11C(1)**

Omit “foreign communications for the purpose of obtaining that intelligence”, substitute “communications for the purpose of obtaining that foreign intelligence from foreign communications intercepted under the warrant”.

#### **5 Subsection 11C(2)**

Omit “except foreign communications”, substitute “except for the purpose of obtaining foreign intelligence relating to a matter specified in the notice referred to in subsection (1) from foreign communications intercepted under the warrant”.

#### **6 Paragraph 11C(3)(a)**

Repeal the paragraph, substitute:

- (a) specify how the interception of communications is proposed to be conducted under the warrant, including how the risk of intercepting domestic communications will be minimised; and

## **7 Subsection 11C(4)**

Repeal the subsection, substitute:

- (4) The Attorney-General must not issue a warrant under this section if the mandatory procedure under subsection (6) is not in force.
- (4A) If a warrant is issued under this section, then the Director-General of Security must prepare a notice that:
  - (a) is addressed to any carrier who operates any part of the telecommunications system that is covered by the warrant; and
  - (b) gives a description that is sufficient to identify that part of the telecommunications system covered by the warrant;unless the Attorney-General is satisfied that the giving of such a notice would not be in the interests of national security or reasonable in the circumstances.

## **8 Before subsection 11C(5)**

Insert:

*Destruction of irrelevant intercepted communications*

## **9 Subsection 11C(5)**

Omit all the words after “Director-General of Security” (last occurring), substitute:

must:

- (c) cause all records of the communication to be destroyed (unless the communication relates, or appears to relate, to activities that present a significant risk to a person’s life); and
- (d) cause the Inspector-General of Intelligence and Security to be notified of the communication if all records of the communication are not caused to be destroyed because the communication relates, or appears to relate, to activities that present a significant risk to a person’s life.



---

**10 After subsection 11C(5) (before the note)**

Insert:

*Mandatory procedure for all intercepted communications*

- (6) The Attorney-General must, in writing, issue a mandatory procedure (the ***mandatory procedure***):
  - (a) for screening communications intercepted under a warrant under this section for the purpose of identifying any domestic communications that may have been intercepted; and
  - (b) for destroying all records of any domestic communication so identified from that screening (other than a domestic communication that relates, or appears to relate, to activities that present a significant risk to a person's life); and
  - (c) for notifying the Inspector-General of Intelligence and Security of any identified domestic communication if all records of the communication are not destroyed because the communication relates, or appears to relate, to activities that present a significant risk to a person's life.
- (7) The mandatory procedure may also deal with other matters relating to communications intercepted under a warrant under this section.
- (8) A person must comply with the mandatory procedure to the extent that it applies to the person.
- (9) Before issuing or varying the mandatory procedure, the Attorney-General must consult:
  - (a) the Minister for Defence; and
  - (b) the Minister for Foreign Affairs; and
  - (c) the Inspector-General of Intelligence and Security; and
  - (d) the Director-General of Security.
- (10) The Attorney-General must review the mandatory procedure as soon as practicable after:
  - (a) the end of the first anniversary of the mandatory procedure being issued; and
  - (b) every 3-year period after that;but the Attorney-General may review the mandatory procedure at any other time as well.

- (10A) The Attorney-General must, as soon as practicable, cause the Parliamentary Joint Committee on Intelligence and Security to be notified about the issuing or varying of the mandatory procedure.
- (10B) The Parliamentary Joint Committee on Intelligence and Security may request a briefing on the mandatory procedure and on any variations to it.
- (11) The mandatory procedure, or any variation of the mandatory procedure, is not a legislative instrument.
- (12) For the purposes of this section, a *domestic communication* is a communication that is not a foreign communication.

#### **11 Section 14 (note)**

After “subsection 11C(5)”, insert “and paragraph 11C(6)(b)”.

#### **12 After paragraph 15(7)(b)**

Insert:

- and (ba) the carrier is required to be given a notice under subsection 11C(4A) in relation to the warrant;

#### **13 Paragraph 15(7)(d)**

Repeal the paragraph, substitute:

- (d) that authorised representative to be given the notice under subsection 11C(4A) as soon as reasonably practicable.

#### **14 Application of amendments**

The amendments made by this Schedule apply in relation to applications made after the commencement of this Schedule for the issue of a warrant.

---

## Schedule 2—Australians or permanent residents acting for, or on behalf of, a foreign power

### *Australian Security Intelligence Organisation Act 1979*

#### **1 At the end of subsection 27A(9)**

Add “, unless the Director-General reasonably suspects that the person is acting for, or on behalf of, a foreign power”.

#### **2 After subsection 27A(9)**

Insert:

- (9A) If the Director-General of Security requests the issue of a warrant under this section for the purpose of collecting information concerning a person who is an Australian citizen or permanent resident (see subsection (9)), then:
- (a) the Director-General must include details in the request about the grounds on which the Director-General suspects that the person is acting for, or on behalf of, a foreign power; and
  - (b) the Attorney-General must not issue the warrant unless the Attorney-General is satisfied that the person is, or is reasonably suspected by the Director-General of, acting for, or on behalf of, a foreign power.

### *Telecommunications (Interception and Access) Act 1979*

#### **3 Subsection 5(1)**

Insert:

*foreign power* has the same meaning as in the *Australian Security Intelligence Organisation Act 1979*.

#### **4 After subsection 11A(2) (before the note)**

Insert:

- (3) If the Director-General of Security requests the issue of a warrant under this section for the purpose of collecting information

concerning a person who is an Australian citizen or permanent resident (see subsection 11D(5)), then:

- (a) the Director-General must include details in the request about the grounds on which the Director-General suspects that the person is acting for, or on behalf of, a foreign power; and
- (b) the Attorney-General must not issue the warrant unless the Attorney-General is satisfied that the person is, or is reasonably suspected by the Director-General of, acting for, or on behalf of, a foreign power.

## **5 After subsection 11B(3) (before the note)**

Insert:

- (4) If the Director-General of Security requests the issue of a warrant under this section for the purpose of collecting information concerning a person who is an Australian citizen or permanent resident (see subsection 11D(5)), then:
  - (a) the Director-General must include details in the request about the grounds on which the Director-General suspects that the person is acting for, or on behalf of, a foreign power; and
  - (b) the Attorney-General must not issue the warrant unless the Attorney-General is satisfied that the person is, or is reasonably suspected by the Director-General of, acting for, or on behalf of, a foreign power.

## **6 After subsection 11C(3)**

Insert:

- (3A) If the Director-General of Security requests the issue of a warrant under this section for the purpose of collecting information concerning a person who is an Australian citizen or permanent resident (see subsection 11D(5)), then:
  - (a) the Director-General must include details in the request about the grounds on which the Director-General suspects that the person is acting for, or on behalf of, a foreign power; and
  - (b) the Attorney-General must not issue the warrant unless the Attorney-General is satisfied that the person is, or is reasonably suspected by the Director-General of, acting for, or on behalf of, a foreign power.

---

**7 At the end of subsection 11D(5)**

Add “, unless the Director-General reasonably suspects that the person is acting for, or on behalf of, a foreign power”.

**8 Paragraphs 63AB(2)(e) and 63AC(2)(e)**

Omit “(within the meaning of the *Australian Security Intelligence Organisation Act 1979*)”.

**9 Application of amendments**

The amendments made by this Schedule apply in relation to applications made after the commencement of this Schedule for the issue of a warrant.

## Schedule 3—Other amendments

### *Telecommunications (Interception and Access) Act 1979*

#### **1 Section 65 (heading)**

Omit “**Communicating**”, substitute “**Dealing in**”.

#### **2 Subsection 65(2)**

Omit all the words after “this subsection,”, substitute:

may:

- (a) communicate that information to such persons, and in such manner, as are approved in writing by the Attorney-General; and
- (b) use that information for such purposes as are approved in writing by the Attorney-General; and
- (c) make a record of that information.

#### **3 After subsection 65(6)**

Insert:

(6A) An approval under subsection (2) is not a legislative instrument.

#### **4 Section 137 (heading)**

Omit “**Communicating**”, substitute “**Dealing in**”.

#### **5 Subsection 137(3)**

Omit all the words after “this subsection,”, substitute:

may:

- (c) communicate that information to such persons, and in such manner, as are approved in writing by the Attorney-General; and
- (d) use that information for such purposes as are approved in writing by the Attorney-General; and
- (e) make a record of that information.

#### **6 At the end of section 137**

Add:

---

- 
- (4) An approval under subsection (3) is not a legislative instrument.

## **7 Application of amendments and savings**

- (1) The amendments made by this Schedule apply in relation to the communication, use or making of records of foreign intelligence information that occurs after the commencement of this Schedule, whether the foreign intelligence information was obtained from interceptions made before or after that commencement.
- (2) Despite the amendments made to subsections 65(2) and 137(3) of the *Telecommunications (Interception and Access) Act 1979* made by this Schedule, approvals given under those subsections that are in force immediately before the commencement of this Schedule continue in force after that commencement as if they were made under the relevant subsection (as amended by this Schedule).

---

*[Minister's second reading speech made in—  
House of Representatives on 25 August 2021  
Senate on 26 August 2021]*

(94/21)

---