

2010-2011

The Parliament of the  
Commonwealth of Australia

HOUSE OF REPRESENTATIVES

*Presented and read a first time*

**Intelligence Services Legislation  
Amendment Bill 2011**

**No.     , 2011**

*(Attorney-General)*

**A Bill for an Act to amend laws relating to  
intelligence, and for other purposes**



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1     **A Bill for an Act to amend laws relating to**  
2     **intelligence, and for other purposes**

3     The Parliament of Australia enacts:

4     **1 Short title**

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

7     **2 Commencement**

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

10    **3 Schedule(s)**

11                     Each Act that is specified in a Schedule to this Act is amended or  
12                     repealed as set out in the applicable items in the Schedule

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concerned, and any other item in a Schedule to this Act has effect according to its terms.

1 **Schedule 1—Amendments of intelligence laws**  
2 **etc.**

3 **Part 1—Amendments**

4 *Australian Security Intelligence Organisation Act 1979*

5 **1 Section 4**

6 Insert:

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

9 **2 Section 4**

10 Insert:

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

13 **3 Section 4 (definition of foreign intelligence)**

14 Repeal the definition, substitute:

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

17 **4 Paragraph 25A(4)(a)**

18 Omit “stored in the target computer”, substitute “held in the target  
19 computer at any time while the warrant is in force”.

20 **5 Paragraph 27A(1)(a)**

21 After “the Minister” (first occurring), insert “(the *issuing Minister*)”.

22 **6 Paragraph 27A(1)(a)**

23 After “requesting the”, insert “issuing”.

24 **7 Paragraph 27A(1)(b)**

25 Repeal the paragraph, substitute:

26 (b) the issuing Minister is satisfied, on the basis of advice  
27 received from the Defence Minister or the Foreign Affairs

1 Minister, that the collection of foreign intelligence relating to  
2 that matter is in the interests of Australia's national security,  
3 Australia's foreign relations or Australia's national economic  
4 well-being;

5 **8 Subsection 27A(1)**

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

7 **9 Subsection 27A(1)**

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

10 **10 Subsection 27A(3)**

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

12 **11 Paragraph 27B(a)**

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

15 **12 Paragraph 27B(a)**

16 After "requesting the", insert "authorising".

17 **13 Paragraph 27B(b)**

18 Repeal the paragraph, substitute:

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

25 **14 Section 27B**

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

27 **15 Section 27B**

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

29 **16 Subsection 35(1)**

30 Insert:

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- 1                    **agency head** means:  
2                    (a) the Director-General; or  
3                    (b) the Director-General of the Australian Secret Intelligence  
4                    Service; or  
5                    (c) the Director-General of the Office of National Assessments;  
6                    or  
7                    (d) the Director of that part of the Defence Department known as  
8                    the Defence Imagery and Geospatial Organisation; or  
9                    (e) the Director of that part of the Defence Department known as  
10                    the Defence Intelligence Organisation; or  
11                    (f) the Director of that part of the Defence Department known as  
12                    the Defence Signals Directorate.

13                    **17 Subsection 35(1)**

14                    Insert:

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

23                    **18 At the end of section 36**

24                    Add:

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

29                    ***Criminal Code Act 1995***

30                    **19 After subsection 476.5(2A) of the *Criminal Code***

31                    Insert:

- 32                    (2AA) Subsections (1) and (2) have effect despite anything in a law of the  
33                    Commonwealth or of a State or Territory, whether passed or made

1 before or after the commencement of this subsection, unless the  
2 law expressly provides otherwise.

3 (2AB) Subsection (2AA) does not affect the operation of subsection (2A).

## 4 ***Intelligence Services Act 2001***

### 5 **20 After subsection 6(3)**

6 Insert:

7 (3A) A direction under paragraph (1)(e) is not a legislative instrument.

### 8 **21 At the end of section 6B**

9 Add:

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

13 Note: For limits on the agency's functions and activities see sections 11 and  
14 12.

### 15 **22 At the end of section 8 (before the note)**

16 Add:

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

### 18 **23 After subparagraph 9(1A)(a)(iv)**

19 Insert:

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

### 23 **24 Subsection 9(1B)**

24 Insert:

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

### 27 **25 Subsection 11(3)**

28 Omit “6B(b), (c), (d), (e) and (f)”, substitute “6B(b), (c), (d), (e), (f) and  
29 (g)”.

1 **26 After subsection 14(2A)**

2 Insert:

3 (2AA) Subsections (1) and (2) have effect despite anything in a law of the  
4 Commonwealth or of a State or Territory, whether passed or made  
5 before or after the commencement of this subsection, unless the  
6 law expressly provides otherwise.

7 (2AB) Subsection (2AA) does not affect the operation of subsection (2A).

8 **27 At the end of section 15**

9 Add:

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

11 **28 At the end of clause 1 of Schedule 2**

12 Add:

13 (8) Guidelines issued under subclause (6) are not legislative  
14 instruments.  
15

1 **Part 2—Application provisions**

2 **29 Application—paragraph 25A(4)(a) of the *Australian***  
3 ***Security Intelligence Organisation Act 1979***

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

8 **30 Application—sections 27A and 27B of the *Australian***  
9 ***Security Intelligence Organisation Act 1979***

10 (1) Section 27A of the *Australian Security Intelligence Organisation Act*  
11 *1979*, as amended by this Schedule, applies in relation to a notice that is  
12 given under paragraph 27A(1)(a) of that Act after this Schedule  
13 commences.

14 (2) Section 27B of the *Australian Security Intelligence Organisation Act*  
15 *1979*, as amended by this Schedule, applies in relation to a notice that is  
16 given under paragraph 27B(a) of that Act after this Schedule  
17 commences.

18 **31 Application—paragraph 36(c) of the *Australian Security***  
19 ***Intelligence Organisation Act 1979***

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

24 **32 Application—subsection 15(7) of the *Intelligence Services***  
25 ***Act 2001***

26 Subsection 15(7) of the *Intelligence Services Act 2001*, as added by this  
27 Schedule, applies in relation to rules that are made under subsection  
28 15(1) of that Act before or after this Schedule commences.