



National Security Legislation Amendment (Espionage and Foreign Interference) Act 2018

Security Officer Guidance

The following information has been prepared to assist Security Officers when providing advice to the Defence workforce on how to meet their security obligations under the Protective Security Policy Framework (PSPF) and Defence Security Principles Framework (DSPF), as a result of the National Security Legislation Amendment (Espionage and Foreign Interference) Act 2018 (the EFI Act) and changes to the Criminal Code Act 1995 (Cth).

Introduction

The Criminal Code Act 1995 (Cth) was amended on 29 June 2018, as a result of the National Security Legislation Amendment (Espionage and Foreign Interference) Act 2018 (the EFI Act) which was passed by Parliament on 28 June 2018, and received Royal Assent the following day.

The EFI Act amendments modernise and strengthen a range of espionage offences and introduce a number of new foreign interference laws, as well as a new aggravated offence for providing false or misleading information during a security clearance process.

This provides Australian law enforcement and security agencies the necessary powers to investigate and the option to pursue prosecution. Criminal charges and imprisonment are now possible consequences for actions that would previously been considered security incidents or breaches of administrative policy.

Implications for Defence – What do Security Officers need to know and do?

It is important that Defence reinforces strong security practices and increases security awareness across the workforce to ensure we are meeting our policy and legal obligations.

Security Officers are to inform their workforce of the legislation and remind them of their individual security responsibilities under the [PSPF](#) and [DSPF](#), particularly around the release of classified information to foreign nationals or entities ([DSPF 15.1 Control Foreign Release of Official Information](#)) and their obligations as a Security Clearance holder to update changes in personal circumstances and ensure the information is not deceptive or misleading.

The workforce should also be reminded to be mindful of applying appropriate security classifications to information/assets and using appropriate handling, storage, communication and destruction methods for classified material.

Security incidents and contact reports should be reported to Commanders/Managers and Security Officers in the first instance. Security Officers are required to report any security incidents or contact reports online using an [XP188](#) or [XP168](#). If the Security Officer is unavailable, individuals can submit the XP188 or XP168 themselves.



Although the secrecy offences commence on 30 December 2018, or on a day to be fixed by Proclamation, whichever is the earlier, everyone should act in accordance with the obligations immediately.

If anyone is unsure about any of the security requirements or processes, they should seek further guidance from their Security Officer.

The Security Awareness and Classified Document Handling courses available through Campus will be updated over time to assist in the security education of the Defence workforce.

Summary of the EFI Act

The *National Security Legislation Amendment (Espionage and Foreign Interference) Act 2018*:

- strengthens existing espionage offences;
- introduces new foreign interference offences targeting covert, deceptive or threatening actions by foreign actors who intend to influence Australia's democratic or government processes or to harm Australia;
- reforms the Commonwealth's secrecy offences, ensuring they appropriately criminalise leaks of harmful information while also protecting freedom of speech;
- introduces comprehensive new sabotage offences that effectively protect critical infrastructure in the modern environment;
- modernises and reforms offences against government, including treason, to better protect Australia's defence and democracy;
- introduces a new theft of trade secrets offence to protect Australia from economic espionage by foreign government principals;
- introduces a new aggravated offence for providing false or misleading information in the context of security clearance processes; and
- ensures law enforcement agencies have access to telecommunications interception powers to investigate these serious offences.

The legislation amends the *Criminal Code Act 1995*, the *Crimes Act 1914*, the *Telecommunications (Interception and Access) Act 1979* and the *Inspector-General of Intelligence and Security Act 1986*.

A comprehensive Summary of Offences and penalties is available [here](#).

The *National Security Legislation Amendment (Espionage and Foreign Interference) Act 2018* can be viewed [here](#).

Security Environment

ASIO has stated foreign intelligence activity against Australia is occurring on an unprecedented scale. The Explanatory Memorandum for the EFI Bill further describes the situation as:

'Foreign actors are currently seeking to harm Australian interests on an unprecedented scale, posing a grave threat to Australia's sovereignty, prosperity and national security. This threat is a substantial concern for the Australian Government. If left unchecked, espionage and foreign interference activities may diminish public confidence in the integrity of political and government institutions, compromise Australia's military capabilities and alliance relationships, and undercut economic and business interests within Australia and overseas.'¹



FACT SHEET | National Security Legislation Amendment Act 2018

As a result of the unprecedented nature of the threat and concern about the effectiveness of Australia's legislation to counter the efforts of foreign adversaries, the Attorney-General conducted a comprehensive review of Australia's espionage and foreign interference laws in 2017.

The findings of the review are summarised below:

'Australia's existing criminal laws are not fully effective in deterring and countering pervasive foreign interference activities directed against our interests. In particular, existing criminal laws relating to espionage, secrecy, sabotage and treason needed to be updated, and new foreign interference and theft of trade secrets offences enacted, to ensure Australia is not a permissive operating environment for malicious foreign actors.

Australian law should also require transparency around activities undertaken in Australia on behalf of foreign principals where the activities are intended to influence political or government processes.'²

The EFI Act provides Australian law enforcement and security agencies with the necessary deterrent and powers to respond to espionage and foreign interference activities to ensure the protection of Australia's security and Australian interests.

¹ Explanatory Memorandum p.12 to National Security Legislation Amendment (Espionage and Foreign Interference) Bill 2018

² Prime Minister's referral letter of the National Security Legislation Amendment (Espionage and Foreign Interference) Bill 2018

