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THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

THE HOUSE OF REPRESENTATIVES

AUSTRALIAN SECURITY INTELLIGENCE ORGANIZATION

AMENDMENT BILL 1986

EXPLANATORY MEMORANDUM

(Circulated by the Authority of the Attorney-General,
the Hon. Lionel Bowen MP)

AUSTRALIAN SECURITY INTELLIGENCE ORGANIZATION
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OUTLINE

The Bill makes a number of amendments to the Australian Security Intelligence Organization Act 1979. The amendments are:

- . to give effect to certain recommendations concerning ASIO made by Mr Justice Hope in the Report of the Royal Commission on Australia's Security and Intelligence Agencies.
- . to establish a Parliamentary Joint Committee on ASIO
- . to effect changes that are necessary in the light of experience since the Act commenced operation in 1980.

The Bill contains two provisions designed to strengthen ministerial control over ASIO. The first makes it clear, subject to appropriate safeguards, that in the performance of his functions under the Act the Director-General of Security is subject to the directions of the Minister.

The second authorises the Minister to give written guidelines to the Director-General as to the performance by ASIO of its statutory functions and the exercise of its powers. Guidelines will be tabled in Parliament, subject to the deletion of sensitive material. Where appropriate, guidelines not tabled in Parliament will be referred to the Parliamentary Joint Committee. The full text of guidelines, will be made available to the Leader of the Opposition.

The Bill provides that the ASIO Act shall not limit the right of persons to engage in lawful advocacy, protest or dissent, and that the exercise of that right shall not, by itself, be

regarded as prejudicial to security. The functions of ASIO are to be construed accordingly.

The Bill makes a number of changes to the Act to define ASIO's jurisdiction more precisely. Significant features are -

- . the term 'subversion' is deleted from the definition of 'security' in favour of a concept of 'politically motivated violence'. This covers the matters now contained in the definition of 'terrorism' and a more precisely defined and limited version of the matters previously covered by 'subversion';
- . there are a separate provisions dealing with activities directed to promoting violence between different communal groups and with acts that are intended to, and are likely to, obstruct the performance by the Defence Force of its activities.
- . 'Active measures of foreign intervention' is replaced with a definition of 'Acts of Foreign Interference', which emphasizes the involvement of a foreign power and indicates more clearly the kinds of interference which are properly the subject of security concern.

ASIO will be given a new function, to obtain foreign intelligence within Australia pursuant to new section 27A of the Australian Security Intelligence Organisation Act 1979, and to new section 11A of the Telecommunications (Interception) Act 1979, and to communicate such intelligence in accordance with the provisions of those two Acts. Foreign intelligence is defined as intelligence relating to the capabilities, intentions or activities of foreign powers.

The Bill makes a number of amendments to the provisions concerning the review of adverse or qualified ASIO security assessments by the Security Appeals Tribunal. Included are -

- . more precise definitions of adverse and qualified security assessments
- . extending the jurisdiction of the Tribunal to enable it to review adverse or qualified security assessments prepared in connection with possible deportation on security grounds
- . a discretion in the Tribunal to make an order against the Commonwealth for costs reasonably incurred by an applicant who is successful, or substantially successful, in his application for review.

The Bill provides for the establishment of a Parliamentary Joint Committee on ASIO. The Committee will comprise 7 members. The functions of the Committee will be to review aspects of the activities of ASIO that are referred to it by the Minister or by either House of the Parliament, and to report to Parliament on those references. The Committee will also be able to ask the Minister to refer a particular matter to it.

There are some changes to the management provisions of the Act. The most significant concerns matters such as the designation of officers and the determination of terms and conditions of employment. These matters are currently decided by a committee comprising the Chairman of the Public Service Board, the Secretary to the Attorney-General's Department and the Director-General of Security. In future they will be determined by the Director-General, with the approval of the Public Service Board. As well, the basis for employment will no longer involve an agreement in writing by the Director-General and an officer.

Financial Impact Statement

The creation of a Parliamentary Joint Committee on ASIO will have a minor impact on expenditure in providing a small

staff, and secure premises, for the Committee.

Giving the Security Appeals Tribunal a discretion to make an order against the Commonwealth for costs reasonably incurred by a successful applicant will have a minimal impact on expenditure. There may be, however, be offset savings which will result from requiring an applicant to indicate what matters are in dispute. This is likely to result in shorter hearings.

NOTES ON CLAUSES

AUSTRALIAN SECURITY INTELLIGENCE ORGANIZATION
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Clause 1 - Short title, etc.

1. Formal

Clause 2 - Commencement

2. The Act will come into operation on a day fixed by Proclamation, except for clauses 33, 34, 35, 36 and 37. These clauses, which amend provisions concerning the employment of ASIO staff, will come into operation on a day later than the other parts of the Act. This is to allow arrangements to be made for the orderly introduction of new terms and conditions.

Clause 3 - Interpretation

3. Clause 3 amends section 4 of the Australian Security Intelligence Organization Act 1979 ('the Principal Act') by inserting a number of new definitions. The most important are -

'acts of foreign interference' means activities relating to Australia that are carried on by or on behalf, directed or subsidised by or are undertaken in active collaboration with a foreign power, being activities that

- (a) are clandestine or deceptive and are carried on for intelligence purposes, for the purpose of affecting political or governmental processes, or are otherwise detrimental to the interests of Australia; or
- (b) involve a threat to any person

tabled in Parliament. The Minister shall also give a copy of the guidelines to the Inspector-General of Intelligence and Security and unless the Minister considers it inappropriate to do so, to the Parliamentary Joint Committee on ASIO.

Clause 7 - Delegation

14. This clause provides that the Director-General of Security may delegate to another officer of the Organization any of his powers that relate to staff or financial management. This provision gives the Director-General similar powers as are available to Secretaries of Commonwealth Departments.

Clause 8 - Functions of Organization

15. This clause inserts new para.17(1)(d) which gives ASIO the function of advising Ministers, authorities of the Commonwealth, and such other persons as the Minister determines in writing, on matters relating to protective security. Broadly speaking, protective security is the protection of people, information and assets, and new para.17(1)(d) puts beyond doubt the authority for ASIO to perform this function.

16. This clause also inserts new para.17(1)(e), which contains the new function of obtaining foreign intelligence within Australia. This function can only be exercised pursuant to the powers contained in new section 27A of the ASIO Act or new section 11A of the Telecommunications (Interception) Act 1979. Communication of any such intelligence may only be made in the circumstances authorized by these two Acts.

Clause 9 - Act not concerned with lawful dissent, etc.

17. This clause inserts new section 17A into the Principal Act. It provides that the ASIO Act shall not limit the right of persons to engage in lawful advocacy, protest or dissent and

the Government or the constitutional system of government of the Commonwealth or of a State or Territory;

- (c) acts that are offences punishable under the Crimes (Foreign Incursions and Recruitment) Act 1978, the Crimes (Hi-jacking of Aircraft) Act 1972 or the Crimes (Protection of Aircraft) Act 1973; or
- (d) acts that
 - (i) are offences punishable under the Crimes (Internationally Protected Persons) Act 1976; or
 - (ii) threaten or endanger any person or class of persons specified by the Minister for the purposes of this sub-paragraph by notice in writing given to the Director General;

This definition will cover those matters commonly regarded as terrorism, including acts which involve assassination, hostage taking, and bombing, for the purpose of achieving a political objective. It will also cover acts or threats of unlawful harm intended or likely to achieve a political objective, for example, threats to poison a water supply, or to deliberately release human or animal disease. It will also assist the Government in carrying out its responsibilities for the protection of internationally protected persons, and other classes of persons for whose safety and protection the Commonwealth has a special responsibility. New sub-section 8A(2) requires the Minister to give to the Director General guidelines in relation to the performance of that part of the Organization's functions that relates to politically motivated violence.

4. The present provisions dealing with 'subversion' and 'terrorism' are deleted.

Clause 4 - Extension of Act to External Territories : copies
of Certain notices to be given to the Inspector-General

5. Clause 4 repeals section 5 of the Principal Act and inserts new sections 5 and 5A. New section 5 provides that the Principal Act extends to every external Territory.

6. New section 5A provides that where the Minister gives the Director-General of Security a notice in connection with politically motivated violence, he shall give a copy of that notice to the Inspector-General of Intelligence and Security.

Clause 5 - Control of Organization

7. Clause 5 omits sub-section 8(2) of the Principal Act, and substitutes 6 new sub-sections. New sub-section (2) provides that subject to new sub-sections (4) and (5), the Director-General of Security is subject to the directions of the Minister in the performance of his functions under the Act.

8. The Director-General may however request that a particular direction of the Minister be put in writing.

9. New sub-section (4) provides that the Minister cannot override the opinion of the Director-General concerning the nature of the advice which should be given by the Organization. A companion measure is new sub-section (5) which provides that the Minister is not empowered to override the opinion of the Director-General as to whether the collection or communication of intelligence concerning a particular person is or is not justified as relevant to security, except by written direction. That direction is to set out the Minister's reasons for overriding the Director-General's opinion.

10. New sub-section (6) requires the Minister to give a copy of any written direction to the Director-General of Security to the Inspector-General. If the direction relates to a matter covered by new sub-section (5), a copy of the direction is also to be given to the Prime Minister. Further, new sub-section (7) provides that the Director-General of Security shall keep a written record of any intelligence collected or communicated in accordance with a direction of the Minister under new sub-section (5).

Clause 6 - Guidelines

11. This clause inserts a new section 8A which will enable the Minister to give written guidelines to the Director-General which are to be observed in the performance by the Organization of any of its functions or the exercise of its powers. Further, new sub-section (2) requires the Minister, as soon as practical after the commencement of section 8A, to give to the Director-General guidelines to be observed in relation to the performance of that part of the Organization's functions that relates to politically motivated violence. Provision is also made enabling those guidelines, from time to time, to be varied or replaced.

12. The Minister is required to table a copy of any guidelines given to the Director-General in Parliament within 15 sitting days of their issue. However, new sub-section (4) makes provision for the deletion from the tabled guidelines of material the disclosure of which would, in the opinion of the Minister, be contrary to the public interest by reason that it would prejudice security, the defence of the Commonwealth, the conduct of the Commonwealth's international affairs or the privacy of individuals.

13. New sub-section (5) requires the Minister to make a copy of any guidelines available to the Leader of the Opposition in the House of Representatives, who is under an obligation to treat as secret any part of the guidelines that have not been

tabled in Parliament. The Minister shall also give a copy of the guidelines to the Inspector-General of Intelligence and Security and unless the Minister considers it inappropriate to do so, to the Parliamentary Joint Committee on ASIO.

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14. This clause provides that the Director-General of Security may delegate to another officer of the Organization any of his powers that relate to staff or financial management. This provision gives the Director-General similar powers as are available to Secretaries of Commonwealth Departments.

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16. This clause also inserts new para.17(1)(e), which contains the new function of obtaining foreign intelligence within Australia. This function can only be exercised pursuant to the powers contained in new section 27A of the ASIO Act or new section 11A of the Telecommunications (Interception) Act 1979. Communication of any such intelligence may only be made in the circumstances authorized by these two Acts.

Clause 9 - Act not concerned with lawful dissent, etc.

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that the exercise of that right shall not, by itself, be regarded as prejudicial to security. It provides that the functions of the Organization shall be construed accordingly.

Clause 10 - Communication of intelligence, etc.

18. This clause makes a number of amendments to section 18 of the Principal Act, which deals with the communication of intelligence to persons or agencies outside the Organisation. It first provides for an increase of the penalty for the commission of an offence by an employee or former employee of ASIO, under existing sub-section 18(2).

19. Clause 10 inserts new para.18(3)(a) which will enable the Organization to communicate to the relevant Police Force, or to the National Crime Authority, information which has come into the possession of the Organization in the course of performing its functions, which relates or appears to relate to the commission or intended commission of an indictable offence against the law of the Commonwealth or of a State or Territory. This provision replaces current provisions which provide that the Organization can communicate 'criminal' information to Police Forces where it relates to an offence punishable by imprisonment for life or for a period of not less than 3 years. The Organization can also currently communicate information to the Australian Federal Police where the information relates or appears to relate to the commission of an offence punishable as provided by section 235 of the Customs Act 1901 - that is, narcotics offences.

20. The new provision, in addition to enabling information to be communicated to the National Crime Authority, is more satisfactory in that the Director-General of Security, and any ASIO officers authorised by him, who are not law enforcement officers, will not be required to make judgments as to the levels of penalties applying to offences.

21. Clause 10 also makes several changes to para.18(3)(c) of the Principal Act. The first is that an officer authorized by the Director-General is able to decide whether the national interest requires the communication of information of the type described in para.(c) (information which has come into the possession of ASIO outside Australia or concerns matters outside Australia). The second is the deletion of the Office of National Assessments from the persons or agencies to whom such information may be communicated, and its replacement with 'an intelligence or security agency'. A definition of 'Intelligence or Security Agency' is to be inserted into section 4 of the Principal Act by clause 3.

22. Sub-section 18(4) of the Principal Act, the current penalty provision, is to be deleted. The matters covered by this sub-section are to be found, as to the penalty for the offence contained in sub-section 18(2) of the Principal Act, at the end of new sub-section (2) as amended, and as to the other matters, in new section 93.

Clause 11 - Co-operation with other authorities

23. This clause adds a new sub-section 19(2) which provides that the Director-General or an officer authorised by him may communicate to an officer of an authority of another country information that has come into the possession of the Organisation in the performance of its functions, if it is relevant to the security of that other country. This provision only operates where the Organisation is co-operating with the authority of that other country in accordance with existing para.19(1)(c), that is, with an authority approved by the Minister as being capable of assisting the Organisation in the performance of its functions.

Clause 12 - Interpretation

24. This clause amends some of the interpretation provisions in section 22 of the Principal Act. It amends the definition

of 'listening device' to include devices which are capable of recording images, sounds or signals, as well as words. It also includes a new definition of 'signals' which is defined to include light and electromagnetic emissions.

Clause 13 - Search warrants

25. Clause 13 makes a number of amendments to section 25 of the Act to extend the authority of the Organization to search not only for records, as defined, but also for other things of security concern.

26. Clause 14 deletes present sub-section 25(2) of the Principal Act which deals with matters relating to 'domestic subversion' as the provision specifying the activities that are to be regarded as subversion, contained in the present sub-section 5(1) of the Principal Act, are to be deleted by clause 4.

Clause 14 - Use of listening devices

27. Clause 14 makes a number of amendments to section 26 of the Principal Act consequential on the new definition of listening device. Further amendment enables the entry onto any premises specified in the warrant from which communications, words and images can be recorded.

Clause 15 - Inspection of postal articles

28. Clause 15 makes an amendment to sub-section 27(1) of the Principle Act which is consequential to the matters contained in new sub-section 27A.

Clause 16 - Warrants for the performance of functions under paragraph 17(1)(e)

29. Clause 16 provides for a new section 27A, to give effect to the new function of obtaining within Australia of foreign

intelligence, contained in new para.17(1)(e), inserted by clause 8. The new section gives authority to the Minister to issue a warrant authorizing the doing of any of the acts or things capable of being authorized by warrants issued under present sub-sections 25(1), 26(3) or (4), or 27(2) or (3), as are specified in the warrant. Sub-section (1) provides that where the Director-General makes application in writing to the Minister requesting the issue of such a warrant in relation to an identified premises or person for the purpose of obtaining foreign intelligence, and the Minister is satisfied, on the basis of advice received from the relevant Minister, that the collection of such foreign intelligence is important in relation to the defence of the Commonwealth or to the conduct of the Commonwealth's international affairs, the Minister may then issue such a warrant. A warrant may be issued subject to restriction or conditions.

30. Sub-section (3) provides for the warrant authorizations to remain in force for the same periods as similar warrant authorizations would remain in force under present sections 25, 26 and 27 of the Principal Act. Sub-section (2) contains a similar provision as is contained in present sub-section 25(3) of the Principal Act concerning matters to be stated in a search warrant. Sub-section (5) contains a similar restriction as is contained in present sub-section 26(8) making it clear that a listening device cannot be used for a purpose which would constitute telephone interception. Sub-sections (6), (7) and (8) contain similar provisions to those in present sub-sections 27(6), (7) and (8), concerning the provision of information to the Australian Postal Commission concerning warrants.

31. Sub-section (9) provides that 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 a permanent resident. Further, sub-section (10) provides that the conditions or restrictions, which may, under sub-section (1), be included in any warrant issued by the

Minister under the authority of that sub-section, may include conditions or restrictions designed to minimise the incidental obtaining by the Organization, in the performance of the function contained in new para.17(1)(e), of information that is not publicly available concerning Australian citizens or permanent residents, or to minimise the retention of such information by the Organization.

Clause 17 - Certain records obtained under a warrant to be destroyed

32. Clause 17 inserts new section 31 into the Act. This section places an obligation on the Director-General to cause the destruction of any record or copy of information, obtained by virtue of a warrant under Division 2 of Part III, which is not required for the performance of the functions or the exercise of the powers of the Organization, where that record is in the possession or custody or under the control of the Organization. The reason for limiting the obligation to records in the possession of the Organization is that the Organization may lawfully communicate information to other agencies, for example to police forces or the National Crime Authority.

Clause 18 - Director-General to report to Minister

33. Section 34 of the Principal Act requires the Director-General to furnish to the Minister in respect of each warrant, issued under Division 2 of Part III, a written report on the extent to which action taken under the warrant has assisted the Organization in carrying out its functions. Clause 18 amends section 34 by making a change consequential to the changes in the Organization's functions.

Clause 21 - Interpretation

34. Clause 19 makes a number of amendments to section 35, which is an interpretation provision for Part IV of the

Principal Act. Important amendments are the deletion of the current definition of 'adverse or qualified security assessment' and the substitution of separate definitions as follows.

35. 'Adverse security assessment' is defined as a security assessment in respect of a person that contains

- (a) any opinion or advice, or any qualification of any opinion or advice, or any information, that is or could be prejudicial to the interests of the person; and
- (b) a recommendation that prescribed administrative action be taken or not be taken in respect of the person, being a recommendation the implementation of which would be prejudicial to the interests of the person.

36. 'Qualified security assessment' is defined as a security assessment in respect of the person that

- (a) contains any opinion or advice, or any qualification of any opinion or advice, or any information that is or could be prejudicial to the interest of the person; and
- (b) does not contain a recommendation of the kind referred to in paragraph (b) of the definition of 'adverse security assessment'.

Clause 20 - Part not to apply to certain assessments

37. Section 36 of the Principal Act provides that Part IV of the Act (which provides for the review of adverse or qualified security assessments by the Security Appeals Tribunal) does not apply in relation to certain security assessments. Clause 20 excludes from the operation of section 36 a security

assessment given for the purposes of new sub-section 13(1) of the Migration Act 1958 (deportation of non-citizens on security grounds). The introduction of a new section 13 into the Migration Act 1958 is contained in clause 21 of the Intelligence and Security (Consequential Amendments) Bill, 1986.

Clause 21 - Applications to Tribunal

38. Clause 21 amends section 54 of the Principal Act by providing that an application to the Security Appeals Tribunal for a review of an adverse or qualified security assessment shall include a statement indicating with which part or parts of the assessment the applicant does not agree, and setting out the grounds on which the application is made. However, no change is made to the nature of the hearing by the Tribunal, or to the procedure to be followed at hearings, as set out in section 58 of the Principal Act.

Clause 22- Notice of application

39. Section 56 of the Principal Act requires an applicant to serve a copy of his application on the Director General of Security and the relevant Commonwealth agency. Clause 24 amends section 56 by requiring the service also of a copy of the statement required by the amendment described in clause 21 above.

Clause 23 - Findings of Tribunal

40. Clause 23 amends section 60 of the Principal Act by deleting the words 'or as to the question to which the assessment relates' from sub-section (1). The effect of this amendment is to confine the Tribunal's consideration to the correctness of or justification for any opinion, advice or information contained in the assessment being reviewed.

Clause 24 - Comments of Tribunal on Organization

41. Clause 24 amends the Principal Act by inserting new section 60A which will enable the Tribunal to attach to the copy of its findings which is given to the Director General any comments the Tribunal wishes to make concerning procedures or practices of the Organization that have come to the attention of the Tribunal as a result of a review. The Tribunal will also give a copy of any such comments to the Minister.

Clause 25 - Effect of findings

42. Clause 25 omits sub-section 61(2) of the Principal Act. This sub-section is regarded as both unnecessary and anomalous.

Clause 26 - Review of findings

43. Clause 26 amends section 63 of the Principal Act. That section provides that any time after the completion of a review, the applicant may apply to the Tribunal for a review of the findings of the Tribunal on the ground that he has fresh evidence of material significance that was not available at the time of the previous review. Clause 26 amends section 63 by excluding from its provisions the review of a security assessment made for the purposes of new sub-section 13(1) of the Migration Act 1958, that is, deportation on security grounds.

Clause 27 - Reference of certain matters to Tribunal by Minister

44. Section 65 of the Principal Act provides that the Minister may refer certain matters to the Tribunal if he is satisfied that it is desirable to do so by reason of special circumstances. This enables him to require the Tribunal to inquire into a security assessment furnished by the Organization before the Principal Act commenced, or a security

assessment or a communication of a similar nature furnished by ASIO other than an assessment, a copy of which has been delivered in accordance with section 38 of the Principal Act. Clause 27 amends section 65 to enable the Minister to obtain a report from the Inspector General of Intelligence and Security for the purpose of his determining whether it is desirable to make a requirement of the Tribunal.

Clause 28 - Costs

45. Clause 28 inserts a new section 72A into the Act. This will enable the Tribunal to order in an appropriate case that the costs reasonably incurred by a successful applicant be paid by the Commonwealth.

Clause 29 - Failure of witness to attend

46. Clause 29 increases the penalty for the offence contained in section 74.

Clause 30 - Refusal to be sworn or answer questions

47. Clause 30 increase the penalty for the offence contained in section 75.

Clause 31 - Contempt of Tribunal

48. Clause 31 increase the penalty for the offence contained in section 76.

Clause 32 - Secrecy

49. Clause 32 increases the penalty for the offence contained in section 81.

Clause 33 - Employment of officers and employees

50. Clause 33 amends section 84 by removing references to the employment of officers under agreements in writing. In future, ASIO officers and employees will be employed in accordance with sections 85 and 86, as amended, of the Act.

Clause 34 - Designation of offices, etc

51. Section 85 provides that the designation of offices with the Organization and the salaries applicable to those offices shall be such as are determined from time to time by the Chairman of the Public Service Board, the Secretary to the Attorney-General's Department and the Director-General of Security. Clause 34 amends section 85 by omitting reference to those three office-holders and substituting a provision providing that designations and salaries are to be determined by the Director-General of Security, with the approval of the Public Service Board.

Clause 35 - Conditions of employment

52. Clause 35 makes an amendment to section 86, which provides for the determination of conditions of employment for officers and employees of the Organization, similar to that made by clause 34 above. Such matters will now be determined by the Director-General, with the approval of the Public Service Board.

Clause 36 - Saving of existing agreements

53. Clause 36 adds a new section 88, which provides for the continued operation of any agreements signed by ASIO officers under section 84 of the Principal Act until the person concerned agrees to accept terms and conditions of employment to be determined by the Director-General under sections 85 and 86, as amended.

Clause 37 - Repeal of section 90

54. This Clause repeals section 90 which provides that regulations may make provision for the employment of officers other than under agreements in writing. Because of amendments to sections 85 and 86, this provision is no longer necessary.

Clause 38 - Publication of identity of officer of Organization

55. Section 92 makes it an offence to publicly identify an officer, or employee or agent of ASIO except with the consent of the Minister or the Director General. Clause 38 makes a number of amendments to this section. It extends the offence provisions to cover the public identification of a former officer, employee or agent of the Organization. It makes provision for members of the Parliamentary Joint Committee on ASIO in that a member of that Committee shall not, except with the consent in writing of the Minister or of the Director General, make public or authorise the publication of any information, acquired by the person by reason of his being a member of the Committee, which could identify a present or former officer, employee or agent of the Organization. The penalty for the offence is increased.

56. New section 92(1B) provides however that the offence provisions concerning the identification of a former officer employee or agent of the Organization do not operate when that former officer employee or agent has either consented in writing to the action or has caused or permitted the fact of his former employment to be made public.

Clause 39 - NEW PART VA - PARLIAMENTARY JOINT COMMITTEE ON THE AUSTRALIAN SECURITY INTELLIGENCE ORGANISATION

57. Clause 39 amends the Principal Act by inserting a new Part VA which provides for the establishment and operation of the Parliamentary Joint Committee on ASIO.

Interpretation

58. New section 92A is an interpretation provision which defines 'Committee', 'member', and 'Presiding Member', for the purposes of Part VA.

Joint Committee on the Australian Security Intelligence Organisation

59. New section 92B provides for the establishment of a Parliamentary Joint Committee on ASIO. The Committee shall consist of 7 members, 3 of whom shall be Senators and 4 of whom shall be members of the House of Representatives. The section also provides for the method of appointment and nomination of members of the Committee, that is, by resolution of the Senate and the House of Representatives on the recommendation of the Leader of the Government and the Prime Minister, respectively. New sub-section 92B(6) provides that, in nominating members of the Committee, the Prime Minister and the Leader of the Government in the Senate shall have regard to the desirability of ensuring that the composition of the Committee takes into account the representation of recognised political parties in the Parliament.

60. New sub-section 92B(7) provides that Ministers, the President of the Senate, the Speaker of the House of Representatives, the Deputy President and Chairman of Committees of the Senate or the Chairman of Committees of the House of Representatives are not eligible for appointment as a member of the Committee. Provision is also made for the circumstances in which a member of the Committee will cease to hold office as a member (new sub-section 92B(9)), for resignation of members (new sub-section 92B(10)) and the filling of casual vacancies (new sub-section 92B(11)). Subject to new sub-sections (9) and (10) a member holds office during the pleasure of the House of Parliament by which he was appointed.

Functions of Committee

61. New section 92C provides that the functions of the Committee are to review aspects of the activities of the Organization that are referred to it by the Minister or by either House of the Parliament, and to report to the Minister and to Parliament on the Committee's comments and recommendations. The section also provides that the Committee may, by resolution, request the Minister to refer a particular aspect of the activities of the Organization to the Committee for review.

62. The functions of the Committee do not include reviewing any matter relating to the obtaining or communicating by the Organization of foreign intelligence, that is a matter (including any that relate to intelligence collection methods or sources of information) that is operationally sensitive, or that does not affect any person who is an Australian citizen or permanent resident. As it will be a function of the proposed Inspector General of Intelligence and Security to investigate individual complaints concerning the activities of the Organization, the functions of the Committee do not include originating inquiries into such complaints.

Presiding Member

63. New section 92D provides for the election, holding of office and resignation of a Presiding Member of the Committee.

Meetings of Committee

64. New section 92E provides that the Committee may meet at such times and, subject to suitability, at such places within Australia as the Committee itself determines. The Committee may meet and transact business notwithstanding the prorogation

of Parliament. New section 92E also provides for a quorum, voting and the minutes of the proceedings of the Committee.

Proceedings of the Committee

65. New section 92F provides that the meetings of the Committee will generally be held in private, and for the giving of directions as to the persons who may be present. It also makes provision for safe-keeping and return of national security classified documents provided to the Committee.

Publication of evidence etc.

66. New section 92G makes it an offence for a person to disclose evidence given in private unless that disclosure is authorised. However this offence does not prohibit the disclosure of evidence which has already been lawfully published or the disclosure of a matter of which a person became aware otherwise than by reason of the giving of the relevant evidence. The Committee shall not disclose evidence unless, after obtaining advice by the Minister, it is satisfied that disclosure would not disclose a matter that the Committee is not, under new section 92N, permitted to disclose in a report to a House of the Parliament.

Power to obtain information and documents.

67. New section 92H provides that where the Committee believes that a person other than a member of the Organization is capable of giving evidence or producing documents relevant to a matter referred to the Committee, a notice may be given to that person requiring him to attend before the Committee to give evidence or to produce any such documents. Where a notice is given, a copy shall also be given to the Minister. A person required to attend before the Committee cannot be required to attend on a day earlier than 5 days after the notice to attend is given to that person. This is to allow time to consider

whether the power conferred on the Minister by new section 92K should be exercised.

Provision of information to Committee by Organization.

68. New section 92J provides the procedure for obtaining evidence or documents from the Director-General of Security, or from a member of the Organization nominated by the Director-General for that purpose. Where the Director-General is required to produce documents to the Committee, a copy of the notice so requiring him must be given to the Minister. Further, the Director-General cannot be required to produce any such documents on a day earlier than 5 days after the notice is given to him. This is to allow time to consider whether the power conferred on the Minister by new section 92K should be exercised.

Certificate by Minister

69. New section 92K provides that where a person is giving evidence or is about to give evidence or produce a document to the Committee and the Minister is of the opinion, for reasons relevant to security, that the person should not either generally or in relation to a particular matter give evidence before the Committee or produce documents to the Committee, the Minister may give the Presiding Member a certificate so stating, and, where appropriate, specifying the matter in relation to which the Minister is satisfied that evidence should not be given or documents should not be produced as the case may be. The Minister may not give a certificate stating that the Director-General should not give evidence but he may give a certificate stating that the Director-General should not give evidence before the Committee relating to a particular matter. Where the Minister gives a certificate in accordance with this section, the Committee is obliged to not receive evidence or documents, either generally or in relation

to a particular matter, in contravention of the Ministers opinion. Any such decision of the Minister shall not be challenged in any Court or Tribunal.

Evidence

70. New section 92L provides that the Committee may take evidence on oath or affirmation and for the Presiding Member, or the member exercising the powers of the Presiding Member, to administer such oath or affirmation.

Offences relating to giving evidence, etc.

71. New section 92M provides that a person who has been given a notice to appear before the Committee shall not without reasonable excuse fail to attend, refuse or fail to be sworn or make an affirmation or refuse or fail to answer a question or produce a document. Similar offence provision are created for officers of the Organization nominated to attend by the Director-General. New sub-section (4) makes it an offence for a person who is required, pursuant to new section 92H or 92J to give evidence to give evidence that is, to the knowledge of the person, false or misleading in a material particular. The new sub-section (5) provides that it is a reasonable excuse for the purposes of this section if the answering of a question that the Committee has required the person to answer or the production of a document required by the Committee would tend to incriminate the person.

Restrictions on disclosure to Parliament.

72. New section 92N provides that the Committee shall not, in a report to a House of the Parliament, disclose the identity of an officer, employee or agent of the Organization or disclose classified material or information on the methods, sources, targets or results of the operations or procedures of the Organization, the public disclosure of which would, or would be likely, to prejudice the performance by the

Organization of its functions. Before reporting to Parliament, the Committee is required to obtain the advice of the Minister as to whether the disclosure of any part of the report would disclose any of the above matters.

Privileges of witnesses.

73. New section 92P provides that a person appearing before the Committee as a witness has the same protection and privileges and is, in addition to the penalties provided by the Act, subject to the same liabilities in any civil or criminal proceeding as a witness in proceedings in the High Court.

Continuance of evidence.

74. New section 92Q permits a new Parliamentary Joint Committee to consider any evidence in a matter part-heard before the previous Committee. This provides for continuity where there is a change in the constitution of the Committee before an inquiry is completed.

Protection of witnesses.

75. New section 92R creates offences where action of specified kinds (including assault) is taken against a person for or on account of that person having appeared or being due to appear as a witness before the Committee or on account of any evidence given by that person to the Committee.

Application of Parliamentary Papers Act.

76. New section 92S provides that new section 92G, which prevents the unauthorised disclosure of evidence given or documents produced to the Committee has effect notwithstanding section 2 of the Parliamentary Papers Act 1908, which makes it lawful for either House of Parliament to authorise the publication of any document laid before it. New

section 92S also provides that where evidence taken by the Committee is lawfully disclosed or published, that publication or disclosure is given the protection of section 4 of the Parliamentary Papers Act 1908 (no action for publishing Parliamentary Papers) as though the disclosure or publication were made under section 2 of the Parliamentary Papers Act.

Secrecy.

77. New section 92T makes it an offence for a person who is or has been a member, or a member of the staff, of the Joint Parliamentary Committee to communicate or divulge evidence given or documents produced to the Committee either directly or indirectly except for the purposes of Part VA of the Act. It also provides that a person who is or has been a member, or member of the staff, of the Committee shall not be required to produce in any court any document of which he or she has custody by virtue of that person's employment under or for the purposes of Part VA or to divulge or communicate to any court any information obtained by reason of such employment.

Prosecution of Offences

78. New section 92U provides that the Attorney General's consent is required for the institution of a prosecution for an offence against Part VA.

Clause 40 - Offences

79. Present section 93 of the Principal Act is a saving provision for the person holding office as Director-General of Security when the Act commenced operating in 1980. This provision is no longer necessary and is repealed. It is replaced by a new section 93, dealing with general matters relating to offences under the Act.

Clause 41 - Annual report

80. Clause 41 makes amendments to section 94 which requires the Director-General to report annually to the Minister. It also currently provides that a copy of this report shall be given to the Leader of the Opposition who is under a duty to treat the report as secret. Clause 41 adds new sub-sections to section 94 which require the Minister to cause a copy of the Director-General's report to be tabled in Parliament within 20 sitting days of the report being received by the Minister. However, the Minister, after obtaining advice from the Director-General, may make such deletions from the report to be tabled in Parliament as are necessary in order to avoid prejudice to security, the defence of the Commonwealth, the conduct of the Commonwealth's international affairs or the privacy of individuals. The obligation on the Leader of the Opposition to treat the report as secret, is varied to limit the obligation of secrecy to any part of the report that is not tabled in Parliament.

1. The first of these is the

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