

1994

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

THE SENATE

**INSPECTOR-GENERAL OF INTELLIGENCE AND SECURITY
AMENDMENT BILL 1994**

EXPLANATORY MEMORANDUM

(Circulated by authority of the Prime Minister, the Hon P J Keating, MP)

INSPECTOR-GENERAL OF INTELLIGENCE AND SECURITY AMENDMENT
BILL 1994

OUTLINE

This Bill proposes an amendment to the *Inspector-General of Intelligence and Security Act 1986* to enable the current and former Inspectors-General and the current and former members of their staff to give evidence to the Commissions of Inquiry into matters relating to the Australian Secret Intelligence Service issued by the Governor-General by Letters Patent dated 15 March 1994 to the Honourable Gordon Samuels AC QC and to Mr Michael Codd AC.

Advice from the Attorney-General's Department is that provisions in the Inspector-General of Intelligence and Security Act which were intended to give the maximum possible protection to information held by the Inspector-General may preclude the Inspector-General from providing information or documents and therefore substantially impede the ability of the Inspector-General to co-operate with the Inquiry. Subsection 34(1) of the Act precludes the Inspector-General and his or her staff from disclosing or communicating any information which they obtained because they held one of these positions, except in the performance of duties and the exercise of powers under the Act. The Inspector-General's powers and functions are listed comprehensively in the Act and do not include the giving of evidence to Royal Commissions and similar inquiries.

Subsection 34(5) of the Act provides that the Inspector-General or his or her staff are not required to produce to a Court any document of which the person has custody or to which the person has had access by reason of having held one of the relevant offices in a court or to divulge or communicate any information. A "court" is defined so as to include an inquiry such as the present one. However, this provision does not give the Inspector-General any discretion about providing information; it simply provides a defence to a person in the relevant class who would otherwise be required by a court or some other legal process to provide such evidence.

The effect of these provisions is that the Inspector-General may not properly disclose information or give documents to the Inquiry.

The Bill will remove this difficulty by permitting the current and former Inspectors-General and the current and former staff of the Office of the Inspector-General to give information and evidence to the Commissions of Inquiry conducted by the Honourable Gordon Samuels and Mr Michael Codd without risking prosecution. In that way, it will ensure that the Commissions have access to a class of information which would be among the most relevant available.

The point should be emphasised that the amendment made by the Bill will **not** permit the disclosure of information or the giving of documents other than to the specified Commissions of Inquiry just referred to. In that way, the present position, which emphasises the need to maintain the greatest possible protection for the privacy of individuals and for information about matters related to security, will be preserved as far as possible.

FINANCIAL IMPACT STATEMENT

The amendment itself will not give rise to any additional costs or savings. There may be costs related to the representation of the Inspector-General before the Commissions of Inquiry and some related administrative costs.

NOTES ON CLAUSES

Clause 1 – Short title etc

The Act will be called the *Inspector-General of Intelligence and Security Amendment Act 1994*. It amends the *Inspector-General of Intelligence and Security Act 1986* which is referred to in the amending Act as the Principal Act.

Clause 2 – Commencement

Clause 2 provides that the Act commences on the date on which it receives Royal Assent.

Clause 3 – Insertion of new section

Clause 3 inserts section 34A into Part IV of the Principal Act after section 34 which is the secrecy provision. The new section is headed "Information and documents may be given to Royal Commissioners" and its object is to provide an exception to the general effect of section 34 and to permit the current and former Inspectors-General and current and former members of the staff of the Inspector-General to provide information and documents to the Commissions of Inquiry into matters relating to the Australian Secret Intelligence Service issued by the Governor-General by Letters Patent dated 15 March 1994 to the Honourable Gordon J Samuels AC QC and Mr Michael Codd AC.

Subsection 34A(1) provides that the purpose of the section is to further the inquiries to be conducted by the Commissions as defined in proposed subsection 34A(7).

Subsection 34A(2) provides that the section applies in spite of the remainder of the Act or any other Act. The effect of this is firstly, that the giving to the Inquiry of material of the kind referred to in the section will not amount to a breach of section 34 or any other enactment (such as the *Crimes Act 1901* or the *Privacy Act 1988*) and secondly, overcome any argument that the provision of the material is not within the functions of the Inspector-General.

Subsection 34A(3) provides that the Inspector-General or a former Inspector-General may give a Commission information acquired and documents of which he or she has custody or to which he or she has access in his or her capacity as Inspector-General.

Subsection 34A(4) provides that the Inspector-General may, in writing, authorise a current or former staff member to give information or documents to a Commission.

Subsection 34A(5) provides that a current or former staff member may, in accordance with his or her authorisation from the Inspector-General, give a Commission information acquired and documents of which he or she has custody or to which he or she has access in his or her capacity as a member of the staff of the Inspector-General.

Subsection 34A(6) permits the current or former Inspector-General or a current or former member of the staff of the Inspector-General to give documents or information to his or her legal adviser. Information or documents may only be given to a legal adviser for a purpose related to the person's involvement or possible involvement in the inquiry conducted by a Commission. For this limited purpose, it is not necessary for a present or former staff member to be authorised by the Inspector-General.

Subsection 34A(7) contains the definitions used in the section:

"staff member" means a member of the staff of the Inspector-General. Section 32 of the Principal Act provides that the staff necessary to assist the Inspector-General are to be persons appointed or employed under the *Public Service Act 1922* and that the Inspector-General has the powers of a Secretary in relation to those staff.

"Commission" means each of the Commissions of inquiry into matters related to the Australian Secret Intelligence Service issued by the Governor-General by Letters Patent dated 15 March 1994 to the Honourable Gordon J Samuels AC QC and to Mr Michael Codd AC. "Commission" includes each of the Commissioners, a person appointed to assist a Commission and a member of staff of a Commission.

"Inspector-General" includes an acting Inspector-General. Section 6A of the Principal Act permits the appointment of an acting Inspector-General.

