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AUSTRALIAN SECURITY INTELLIGENCE ORGANIZATION
AMENDMENT BILL 1986

Date introduced: 22 May 1986
House: House of Representatives
Presented by: Hon. Lionel Bowen, M.P.,
Attorney-General

DIGEST OF BILL

Purpose

To clarify the role and powers of the Australian Security Intelligence Organisation (ASIO) and establish a Parliamentary Joint Committee on ASIO.

Background

The Australian Security Intelligence Organisation is the Commonwealth's domestic security intelligence organisation[1]. Its role is to collect, evaluate and communicate intelligence relevant to the protection of Australia and its people from espionage, other acts of foreign interference, subversion and terrorism. ASIO does not have power to act independently on the intelligence it has gathered, and is restricted to informing and advising the government. ASIO's advisory function includes the provision of protective security advice to government departments and the furnishing to departments of security assessments on people requiring clearance for access to security information or areas, or on foreigners seeking to enter or remain in Australia.

The estimated expenditure on ASIO for 1985-86 was \$38.5 million.[2] Total expenditure on Australia's Security and Intelligence Agencies was estimated at \$55.2 million for 1985-86, representing a 1.7% decrease on the 1984-85 period. The 1985-86 estimates for ASIO included \$3.9 million for expenditure appropriated to the National Capital Development Commission for the provision of new offices in Canberra and a further amount included in the estimate

relates to the expenses incurred by reason of moving ASIO's headquarters from Melbourne to Canberra.

A Royal Commission on Security and Intelligence was established in August 1974 and reported on ASIO in late 1976 and subsequently in October 1977. At that time the Government announced acceptance of most of the Commission's recommendations, including proposed amendments to the Australian Security Intelligence Organization Act 1956. In the event, a new Act, the Australian Security Intelligence Organization Act 1979 (the Principal Act) was enacted to replace the 1956 Act. The major features of the new Act, which came into force in June 1980, were a clearer statement of ASIO's functions, the prohibition of ASIO's use of certain intrusive methods of intelligence collection except under ministerial warrant and a new statutory framework for the preparation and communication by ASIO of security assessments on individuals.

The Hope Royal Commission on Australia's Security and Intelligence Agencies (see reference [1]), was established in May 1983 primarily to inquire into the activities of the security and intelligence agencies in the period since the 1974 Royal Commission, and into the implementation of Government decisions made in the light of the recommendations of that Commission. As far as ASIO was concerned, the Commission was to inquire into the Organisation with particular reference to, amongst other things;

- . the progress made in implementing Government decisions on the recommendations of the 1974 Royal Commission;
- . whether ASIO has effectively and properly served the interests of Australia;
- . whether changes in the law were needed to ensure accountability; and
- . whether adequate redress was provided for people who were disadvantaged by ASIO's actions.

The Hope Royal Commission reported in December 1984 and made a number of recommendations. In particular the Commission's recommendations on the collection of foreign

intelligence,[3] the strengthening of ministerial control[4] and the changes in the provisions concerning the Security Appeals Tribunal[5] have been adopted by the present Bill.

Main Provisions

Clause 3 will make a number of amendments to the definitions of words and phrases appearing in section 4 of the Principal Act. In particular the definitions of "domestic subversion" and "terrorism" are omitted and definitions of "acts of foreign interference" and "politically motivated violence" will be inserted.

Ministerial control over ASIO will be strengthened by the amendments to be made to section 8 of the Principal Act by clause 5. The amendments will make it clear that the Director-General of ASIO is subject to the Minister's direction. However, the Minister will not be able to override the opinion of the Director-General on the nature of ASIO's advice and the Director-General's opinion on whether the obtaining or disseminating of information on a particular individual is relevant to security will only be able to be overridden by a written determination that contains the reasons for overriding such an opinion.

The Minister will be able to give the Director-General guidelines for the functioning of ASIO. A copy of the guidelines will be laid before each House of Parliament and the Minister will be able to delete sections which might prejudice security. The Leader of the Opposition is to be given a copy of the full guidelines and will be required not to reveal the deleted parts (clause 6 which will insert a new section 8A into the Principal Act).

Section 17 of the Principal Act will be amended to allow ASIO to collect certain foreign intelligence in Australia and to clarify its power to provide advice on protective security (clause 8).

A new section 17A will be inserted into the Principal Act to make it clear that the Act is not to limit the right of a person to engage in lawful advocacy, protest or dissent (clause 9).

Amendments to section 18 of the Principal Act will allow information relating to indictable offences to be communicated to Australian police forces (clause 10). In addition the Director-General will be able to supply information to authorities in other countries relevant to

the security of that country (clause 11 will add sub-section 19(2) to the Principal Act).

The Security Appeals Tribunal will be given power to make comments relating to ASIO's procedures or practices and such comments are to be forwarded to the Minister (clause 24 which will insert a new section 60A into the Principal Act).

It is an offence to publish or broadcast the name of an ASIO officer. Clause 38 will amend section 92 of the Principal Act to make it an offence to identify former officers of ASIO and people connected with those former officers.

Section 94 of the Principal Act requires the Director-General to report on each year of ASIO's activities. Clause 41 will amend section 94 so that the report will have to be tabled in Parliament. Before the tabling of the report the Minister, after consulting the Director-General, will have the opportunity to delete material 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".

Clause 39 will insert a new Part VA into the Principal Act, headed "Parliamentary Joint Committee on the Australian Security Intelligence Organisation" and containing sections 92A-U.

The Parliamentary Joint Committee (the Committee) will be appointed under proposed sub-section 92B(1). The Committee will consist of 3 Senators and 4 members of the House of Representatives (proposed sub-section 92B(2)). When considering which Senators or Members to nominate to the Committee the Leader of the Government in the Senate and the Prime Minister will have to 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" (proposed sub-section 92B(6)). Ministers will not be eligible for nomination (proposed sub-section 92B(7)).

The function of the Committee will be to consider matters referred it by the Minister or either House of Parliament (proposed sub-sections 92C(1) and (2)). Proposed sub-section 92C(3) provides the Committee with an avenue to suggest to the Minister what it should be investigating. A

number of matters are expressly excluded from the Committee's functions, such as the reviewing of operationally sensitive matters or inquiring into individual complaints about ASIO's activities (proposed sub-section 92C (4)).

It will be an offence to disclose or publish evidence given before the Committee (proposed section 92G). The Committee will have power to call people before it to give evidence and produce documents (proposed section 92H). Where the Minister is of the opinion, "for reasons relevant to security", that a person should not give evidence before the Committee, the Minister may exempt that person from having to give evidence (proposed sub-section 92K(1)) and the Minister's decision will not be questioned in any court or tribunal (proposed sub-section 92K(3)). The Committee will be able to require people to give evidence on oath (proposed section 92L).

Proposed section 92M sets out a number of offences and prescribes penalties. Where a person is called to give evidence or produce a document to the Committee, it will be an offence to fail to attend, or refuse to be sworn or answer questions or to refuse to produce a document without reasonable excuse. The penalty for knowingly giving the Committee false or misleading evidence will be a fine of \$5000 or 2 years imprisonment, or both (in the case of a corporation a fine of \$25 000).

Before a report of the Committee is presented to Parliament the Minister will be able to decide whether the report identifies a particular ASIO officer or whether there is classified material in the report which would be likely to prejudice ASIO's activities. In either case such material will have to be omitted from the report before it is presented to Parliament (proposed section 92N).

Interfering with a Committee witness may result in a \$10,000 fine or 5 years imprisonment, or both (in the case of a corporation \$50,000) (proposed section 92R). It will also be an offence for a member of the Committee or their staff to divulge information obtained by reason of that person's position (proposed section 92T).

Remarks

This Bill is part of a package which consists of the:

Australian Security Intelligence Organization
Amendment Bill 1986 (86/83)
Inspector-General of Security and Intelligence Bill
1986 (86/85)
Intelligence and Security (Consequential
Amendments) Bill 1986 (86/84).

For further information, if required, contact the
Law and Government Group.

27 June 1986

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References

1. Royal Commission on Australia's Security Intelligence Agencies (Hope Royal Commission), Report on the Australian Security Intelligence Organisation, AGPS 1985 (Parliamentary Paper No. 232/1985), p.1.
2. Budget Paper No. 1. Budget Statements 1985-86, p.274.
3. Op. cit., Hope Royal Commission, p.137.
4. Ibid., p.319.
5. Ibid., pp.255-8.

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