Purpose


Background

Refer to the Digest for the Australian Security Intelligence Organization Amendment Bill 1986 (86/83) and the Inspector-General of Intelligence and Security Bill 1986 (86/85).

Main Provisions

ADMINISTRATIVE DECISIONS (JUDICIAL REVIEW) ACT 1977

This Act will not apply to decisions made under section 13 of the Migration Act 1958 or under the Inspector-General of Intelligence Bill when enacted (clause 4 which will amend Schedule 1 of this Act).

ARCHIVES ACT 1983

Clause 6 will add "Inspector-General of Intelligence and Security" to sub-section 29(8) of this Act so that the Inspector-General need not transfer records to Archives and Archives will generally not have access to the Inspector's records.
AUDIT ACT 1901

In the certificate which the Minister supplies to the Auditor-General each year, the Minister will also have to certify whether ASIO's exempt accounts have been internally audited and whether irregularities in those accounts, if any, have been resolved (clause 9 which will add sub-paragraphs 5(c) and 5(d) to section 70D of this Act).

CRIMES ACT 1901

Clause 11 will amend the definition of "seditious intention" from section 24A of this Act.

An intention to cause violence or create public disorder will be an element of the offences relating to seditious enterprise (clause 12 which will amend section 24C of this Act). Similarly clause 13 and clause 14 will amend sections 24D and 24F of this Act respectively to alter the definition to offences relating to seditious words and certain acts deemed not to have been done in good faith.

FREEDOM OF INFORMATION ACT 1982

The Inspector-General's documents will be exempt from the operation of this Act (clause 16 will amend section 7 of this Act).

HUMAN RIGHTS COMMISSION ACT 1981

Clause 19 will add sub-sections 2A and 2B to section 9 of this Act. Proposed sub-section 2A will provide that it is not the Commission's function to inquire into complaints about an intelligence agency, and whenever there is a complaint of a human right being infringed by such an agency the Commission is to refer the complaint to the Inspector-General. "Intelligence agency" is defined in proposed sub-section 2B to include ASIO.
MIGRATION ACT 1958

Clause 21 will insert a new section 13 into this Act which will deal with the deportation of non-citizens. Proposed section 13 will provide that the Minister will generally be able to deport a non-citizen where the non-citizen's conduct constitutes a threat to security and the Minister has been given an assessment (prepared by ASIO with a view to having the Minister deport that person) and the assessment is adverse to the person. Where the non-citizen has received a copy of the adverse assessment and successfully appeals to the Security Appeals Tribunal (the Tribunal) against the assessment, within the time restraints prescribed, the Minister will not then be able to deport that non-citizen. Where the non-citizen is not entitled to a copy of the assessment but the Attorney-General has had the Tribunal review the assessment, and the Tribunal does not confirm the assessment, the Minister will not be able to then deport the non-citizen.

TELECOMMUNICATIONS (INTERCEPTION) ACT 1979

It will be an offence for a person to divulge information obtained by intercepting a telecommunication, even where a warrant has been obtained for the purpose, except where the person divulging the information is an officer of the Telecommunications Commission (new sub-section (4) of section 7 of this Act which will be substituted by clause 27). The penalty for an offence against this sub-section will be a $5,000 fine or 2 years imprisonment. Proposed sub-section 7(4A) will provide an exception to this prohibition, i.e. where information has been obtained (other than by virtue of a warrant issued under section 11A of this Act), that information may be communicated and made use of by ASIO in the performance of its functions or otherwise for the purpose of security and by Australian Federal Police for the purpose of a narcotics inquiry. Proposed sub-section 7(4B) provides a further exception, that is, where information is obtained by virtue of a section 11A warrant, that information may be communicated or made use of by the ASIO officers, including the Director-General of Security, amongst themselves.

Clause 28 will insert a new section 11A into this Act. The proposed new section will make provision for the issuing of warrants for the purpose of intercepting
telecommunications in relation to ASIO's proposed new function of gathering foreign intelligence. Before issuing such a warrant the Attorney-General must be satisfied that the matter is important in relation to the defence of the Commonwealth (proposed sub-section 11A(1)). The Director-General will not be able to request that the Attorney-General issue a warrant under this section for the purpose of collecting information concerning Australian citizens or permanent residents (proposed sub-section 11A(8)). Records or copies of information obtained under a section 11 or 11A warrant which are no longer required by ASIO, and are in ASIO's possession, will have to be destroyed (clause 31 which will substitute a new section 14 into this Act).

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

Remarks

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.

Bills Digest Service
LEGISLATIVE RESEARCH SERVICE

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