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INSPECTOR-GENERAL OF INTELLIGENCE AND SECURITY
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 establish the office of the Inspector-General of Intelligence and Security which will inquire into various aspects of Australian security agencies.

Background

There are a number of agencies in Australia dealing with internal and external intelligence gathering and processing. The principal bodies are the Australian Security Intelligence Organization (ASIO), the Australian Secret Intelligence Service (ASIS), the Defence Signals Directorate (DSD), the Office of National Assessment (ONA) and the Joint Intelligence Organization (JIO). Of these bodies, ASIO is the domestic intelligence body and ASIS collects foreign intelligence while the ONA's principal function is to report on and assess intelligence. The DSD and JIO are primarily concerned with military communications and intelligence.

There are four Ministers responsible for the various intelligence agencies. The ONA was established by the Office of National Assessment Act 1977 and the Director-General of the body is responsible to the Prime Minister. Similarly, ASIO functions under the Australian Security Intelligence Organization Act 1979 and its Director-General is responsible to the Attorney-General. The DSD and JIO are both elements of the Department of Defence and as such are responsible to the Minister for Defence. ASIS operates under Ministerial Directive and its
Director-General is responsible to the Minister for Foreign Affairs.

The accountability of the intelligence agencies was examined by Mr Justice Hope who conducted the Royal Commission on Australia's Security and Intelligence Agencies (the Hope Royal Commission) which delivered its reports in December 1984.[1] In the report on ASIO, it was recommended that an office be created to 'maintain a close scrutiny of ASIO's performance of its functions, and to look into complaints, in order to give greater assurance to the Attorney-General, and through him Parliament and the public, that ASIO is acting with propriety and within its charter'.[2] This idea was extended in the General Report of the Hope Royal Commission where it was recommended that the office also scrutinise ASIS and DSD.[3] As regards the other agencies, i.e. ONA and JIO, the Hope Royal Commission noted that these bodies were involved in the assessment, rather than collection, of intelligence and recommended that the office have no general authority over these bodies but be able to investigate matters referred to it by the responsible Minister. It was recommended that the office be titled 'Inspector-General of Intelligence and Security'.

This Bill implements those recommendations.

Main Provision

Clause 4 lists the objects of the Bill. They include: to assist the Minister in the oversight and review of Australian intelligence or security agencies including their compliance with Australian law; to assist Ministers in ensuring that their activities are consistent with human rights; and to allow review of certain directions given to ASIO by the Attorney-General.

The office of the Inspector-General of Intelligence and Security is created by clause 6 which also provides that a recommendation for appointment to the office is to be made to the Governor-General by the Prime Minister after consultation with the Leader of the Opposition.

The functions of the Inspector-General are listed in clause 8. The functions of the Inspector-General, and when they may be exercised, differs between the various agencies.

ASIO: At the request of the responsible Minister, in response to a complaint or of its own motion, the
Inspector-General may inquire into ASIO's compliance with the law, its compliance with Ministerial Directions, the propriety of activities, the effectiveness of procedures relating to legality or propriety or an act or practice referred to the Inspector-General by the Human Rights Commission.

At the Minister's request or of its own motion the Inspector-General may review employee grievance procedures.

At the Minister's request the Inspector-General may inquire into what action, if any, should be taken to protect the rights of an Australian citizen or permanent resident who is the subject of an adverse report that has not been reviewed by the Security Appeals Tribunal.

In addition, the Inspector-General will be able to review Ministerial directions regarding the justification of the collection or communication of certain intelligence. (sub-clause 8(1)).

ASIS and DSD: At the request of the Minister, in response to a complaint by an Australian citizen or permanent resident or of its own motion, the Inspector-General may inquire into compliance with the law, compliance with Ministerial guidelines or directions, the propriety of particular activities or an act or practice referred by the Human Rights Commission.

At the Minister's request, or of its own motion, the Inspector-General may inquire into employee grievance procedures.

At the Minister's request the Inspector-General may investigate procedures relating to the legality or propriety of the bodies' activities (sub-clause 8(2)).

JIO and ONA: At the request of the responsible Minister, the Inspector-General may inquire into the agencies compliance with the law, the propriety of particular activities and the effectiveness of procedures relating to legality and propriety.

At the Minister's request, or on the Inspector-General's own motion, matters referred to the Inspector-General by the Human Rights Commission and employee grievance procedures may be reviewed (sub-clause 8(3)).
The Inspector-General is not to inquire into individual employee grievances (sub-clause 8(5)).

Clause 9 will allow the Prime Minister to direct that an inquiry be held into any matter falling within the Inspector-General's functions.

Clause 11 lists the grounds on which the Inspector-General can refuse to inquire into a complaint. They include where the Inspector-General is satisfied that the complaint is frivolous or vexations or that in all the circumstances no inquiry is warranted. If no action is taken, the complainant, the responsible Minister and the head of the relevant agency are to be so informed in writing (clause 12).

People in custody will, upon request, have to be provided with material to make a written complaint to the Inspector-General. Such a complaint is to be delivered to the Inspector-General is a sealed envelope without undue delay. Any sealed envelope from Inspector-General must be delivered to the person in custody (clause 13).

Clause 17 deals with the conduct of inquiries. Inquiries are to be held in private and, subject to the matters listed in the clause, the Inspector-General will determine how it is to be conducted. Of the matters listed in the clause the most important relate to appearance before an inquiry. A person who is to be the subject of an adverse report, or the agency head and responsible Minister where an agency is to be the subject of an adverse report, will have to be offered a reasonable chance to make either oral or written submissions. No other person need be given an opportunity to appear.

Clause 18 will give the Inspector-General power to acquire information and documents.

Clause 19 will allow the Inspector-General to enter agencies at reasonable times after notifying the head of the agency.

The Inspector-General is to report the results of inquiries to the responsible Minister and agency head (clause 22). A written response is to be made to complaints (clause 23).

Part II of the Bill (clauses 26 to 32) deals with administration including such matters as renumeration
(clause 27), resignations (clause 29) and the disclosure of interests (clause 31).

Clause 33 will protect the Inspector-General from civil actions where he acted in good faith.

Clause 34 will make it an offence to communicate or use information acquired except in the performance of duties. An annual report is to be prepared (clause 35) and the Governor-General will be able to make regulations to give force to the Bill (clause 36).

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.

Bills Digest Service

27 June 1986

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References

2. Ibid., p.330.

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