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THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

**NATIONAL SECURITY INFORMATION (CRIMINAL PROCEEDINGS)
(CONSEQUENTIAL AMENDMENTS) BILL 2004**

EXPLANATORY MEMORANDUM

(Circulated by authority of the Attorney-General,
the Honourable Philip Ruddock MP)

NATIONAL SECURITY INFORMATION
(CRIMINAL PROCEEDINGS) (CONSEQUENTIAL AMENDMENTS) BILL
2004

GENERAL OUTLINE

The National Security Information (Criminal Proceedings) (Consequential Amendments) Bill 2004 (the Bill) amends the *Administrative Decisions (Judicial Review) Act 1977* and the *Judiciary Act 1903* in regards to a court's jurisdiction to hear or determine an application by a defendant in a federal criminal proceeding (the defendant), where the application relates to a decision of the Attorney-General to issue a certificate under section 24 or 26 of the *National Security Information (Criminal Proceedings) Act 2004* (certificate decision).

Specifically, the Bill amends the *Administrative Decisions (Judicial Review) Act 1977* to include a certificate decision of the Attorney-General as a related criminal justice process decision. This amendment will have the effect of limiting the jurisdiction of a court to hear or determine a defendant's application under that Act, where the application relates to a certificate decision of the Attorney-General. In addition, the amendment will prevent a person from requesting the Attorney-General to provide reasons for the certificate decision.

The Bill amends the *Judiciary Act 1903* to include a certificate decision of the Attorney-General as a related criminal justice process decision. This amendment will have the effect of generally giving the Supreme Court of the State or Territory in which the prosecution or appeal is before, jurisdiction with respect to any matter in which the defendant seeks a writ of mandamus or prohibition or an injunction against the Attorney-General in relation to a certificate decision.

Financial Impact

The Bill is not expected to have a direct financial impact.

NOTES ON CLAUSES

Clause 1: Short title

This clause is a formal provision specifying the short title of the Bill.

Clause 2: Commencement

This clause specifies the days on which the various provisions of the Bill commence. Section 1 to 3 of the Bill (and anything in the Bill not covered elsewhere by this clause) commence on the day on which the Act receives Royal Assent.

Schedules 1 and 2 of the Bill commences immediately after the commencement of sections 3 to 44 of the *National Security Information (Criminal Proceedings) Act 2004*.

Clause 3: Schedule(s)

This clause is the operative clause that gives effect to the amendments set out in the Schedules to the Act.

Schedule 1 - Amendment of the Administrative Decisions (Judicial Review) Act 1977

Item 1

This item repeals and substitutes the definition of related criminal justice process decision in subsection 9A (4) to include a reference to a certificate decision of the Attorney-General. The effect of this amendment is to limit, via subsection 9A (1), the jurisdiction of courts to hear a defendant's application under the *Administrative Decisions (Judicial Review) Act 1977* in relation to a certificate decision of the Attorney-General while the prosecution or appeal is before a court.

This amendment ensures that an application under the Act does not delay a prosecution or appeal that is before a court.

Item 2

This item inserts in Schedule 2 a certificate decision of the Attorney-General. The effect of this amendment is that section 13 will not apply to a certificate decision of the Attorney-General. This means that a person cannot request the Attorney-General to furnish a written statement setting out the findings on material questions of fact, the evidence or other material on which those findings were based and the reasons for the certificate decision.

The nature of a certificate decision is such that exposure of the reasons for the decisions could itself prejudice Australia's national security. For this reason, the Attorney-General is not required to provide a statement of reasons under section 13 of the Act.

Schedule 2 - Amendment of the Judiciary Act 1903

Item 1

This item repeals and substitutes the definition of related criminal justice process decision in subsection 39B (3) to include a reference to a certificate decision of the Attorney-General. The effect of this amendment is to give the Supreme Court of the State or Territory in which the prosecution or appeal is before a court, jurisdiction with respect to any matter in which the defendant seeks a writ of mandamus or prohibition or an injunction against the Attorney-General in relation to a certificate decision.

This amendment promotes administrative efficiency by ensuring that the application for a writ of mandamus or prohibition or an injunction is heard by the same court that is likely to hear the prosecution or appeal.