



Inspector-General of Intelligence and Security Act 1986

No. 101 of 1986

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Inspector-General of Intelligence and Security Act 1986

No. 101 of 1986

An Act to provide for the appointment of an Inspector- General of Intelligence and Security, and for related purposes

[Assented to 17 October 1986]

BE IT ENACTED by the Queen, and the Senate and the House of Representatives of the Commonwealth of Australia, as follows:

PART I—PRELIMINARY

Short title

1. This Act may be cited as the *Inspector-General of Intelligence and Security Act 1986*.

Commencement

2. This Act shall come into operation on the day fixed under sub-section 2 (1) of the *Australian Security Intelligence Organization Amendment Act 1986*.

Interpretation

- 3. (1)** In this Act, unless the contrary intention appears—
- “adverse security assessment” has the same meaning as in Part IV of the *Australian Security Intelligence Organization Act 1979*;
- “agency” means ASIO, ASIS, DSD, JIO or ONA;
- “ASIO” means the Australian Security Intelligence Organization continued in existence by the *Australian Security Intelligence Organization Act 1979*;
- “ASIS” means the Australian Secret Intelligence Service;
- “Australia”, when used in a geographical sense, includes the external Territories;
- “Commonwealth agency” has the same meaning as in Part IV of the *Australian Security Intelligence Organization Act 1979*;
- “DSD” means that part of the Department of Defence known as the Defence Signals Directorate, and includes any part of the Defence Force that performs functions on behalf of that part of that Department;
- “employee”, in relation to an agency, means a person who is employed, whether in a permanent or temporary capacity, in the agency;
- “head”, in relation to ASIO, ASIS, DSD, JIO or ONA means the Director-General of Security, the Director-General of ASIS, the Director of DSD, the Director of JIO or the Director-General of ONA, as the case may be;
- “human rights” has the same meaning as in the *Human Rights Commission Act 1981*;
- “Inspector-General” means the Inspector-General of Intelligence and Security;
- “JIO” means that part of the Department of Defence known as the Joint Intelligence Organisation;
- “Judge” means—
- (a) a Judge of a court created by the Parliament or of a court of a State or of the Northern Territory; or
 - (b) a person who has the same designation and status as a Judge of a court created by the Parliament;
- “member”, in relation to an agency, means—
- (a) an employee of the agency; or
 - (b) a person who is authorised to perform any of the functions of the agency on behalf of the agency;
- “ONA” means the Office of National Assessments established by the *Office of National Assessments Act 1977*;
- “permanent resident” means a person, other than an Australian citizen—
- (a) whose normal place of residence is situated in Australia;
 - (b) whose presence in Australia is not subject to any limitation as to time imposed by law; and

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(c) who is not a prohibited non-citizen within the meaning of the *Migration Act 1958*;

“qualified security assessment” has the same meaning as in Part IV of the *Australian Security Intelligence Organization Act 1979*;

“responsible Minister”, in relation to an agency, means—

(a) in the case of an agency established or continued in existence by an Act—the Minister administering that Act; or

(b) in any other case—the Minister having general responsibility for the activities of the agency;

“security” has the same meaning as in the *Australian Security Intelligence Organization Act 1979*.

(2) In this Act, unless the contrary intention appears, a reference to the taking of action includes a reference to—

(a) the making of a decision or recommendation; and

(b) the failure or refusal to take any action or to make a decision or recommendation.

(3) For the purposes of this Act, action that is taken by a member of an agency shall be deemed to be taken by the agency if the member takes the action in his or her capacity as a member of the agency, whether or not—

(a) the action is taken for or in connection with, or is incidental to, the performance of the functions of the agency; or

(b) the taking of the action is within the duties of the member.

Objects of Act

4. The objects of this Act are—

(a) to assist Ministers in the oversight and review of—

(i) the compliance with the law by, and the propriety of particular activities of, Australian intelligence or security agencies;

(ii) the effectiveness and appropriateness of the procedures of those agencies relating to the legality or propriety of their activities; and

(iii) certain other aspects of the activities and procedures of certain of those agencies;

(b) to assist Ministers in ensuring that the activities of those agencies are consistent with human rights; and

(c) to allow for review of certain directions given to ASIO by the Attorney-General.

Application of Act

5. This Act applies both within and outside Australia and extends to every external Territory.

PART II—INSPECTOR-GENERAL

Division 1—Establishment and Functions of Inspector-General

Inspector-General of Intelligence and Security

6. (1) There shall be an Inspector-General of Intelligence and Security.
- (2) The Inspector-General shall be appointed by the Governor-General.
- (3) Before a recommendation is made to the Governor-General for the appointment of a person as Inspector-General, the Prime Minister shall consult with the Leader of the Opposition in the House of Representatives.
- (4) The Governor-General may, for the purpose of appointing to the office of Inspector-General a person who is the holder of a judicial office of a State or of the Northern Territory, enter into such arrangement with the Governor of that State or the Administrator of that Territory, as the case may be, as is necessary to secure that person's services.
- (5) An arrangement under sub-section (4) may provide for the Commonwealth to reimburse a State or the Northern Territory with respect to the services of the person to whom the arrangement relates.

Appointment of Judge as Inspector-General not to affect tenure, &c.

7. (1) The appointment of the holder of a judicial office as Inspector-General, or service by the holder of a judicial office as Inspector-General, does not affect the person's tenure of that judicial office or the person's rank, title, status, precedence, salary, annual or other allowances or other rights or privileges as the holder of that judicial office and, for all purposes, the person's service as Inspector-General shall be taken to be service as the holder of that judicial office.
 - (2) In this section, "judicial office" means—
 - (a) an office of judge of a court created by the Parliament; or
 - (b) an office the holder of which has, by virtue of holding that office, the same status as a judge of a court created by the Parliament.

Functions of Inspector-General

8. (1) Subject to this section, the functions of the Inspector-General in relation to ASIO are—
 - (a) at the request of the responsible Minister, of the Inspector-General's own motion or in response to a complaint made to the Inspector-General, to inquire into any matter that relates to—
 - (i) the compliance by ASIO with the laws of the Commonwealth and of the States and Territories;
 - (ii) the compliance by ASIO with directions or guidelines given to ASIO by the responsible Minister;
 - (iii) the propriety of particular activities of ASIO;

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- (iv) the effectiveness and appropriateness of the procedures of ASIO relating to the legality or propriety of the activities of ASIO; or
 - (v) an act or practice of ASIO that is or may be inconsistent with or contrary to any human right, being an act or practice referred to the Inspector-General by the Human Rights Commission;
 - (b) at the request of the responsible Minister or of the Inspector-General's own motion, to inquire into the procedures of ASIO relating to redress of grievances of employees of ASIO;
 - (c) at the request of the responsible Minister, to inquire into the action (if any) that should be taken to protect the rights of a person who is an Australian citizen or a permanent resident in a case where—
 - (i) ASIO has furnished a report to a Commonwealth agency that may result in the taking of action that is adverse to the interests of the person; and
 - (ii) the report could not be reviewed by the Security Appeals Tribunal,and, in particular, to inquire into whether the person should be informed of the report and given an opportunity to make submissions in relation to the report; and
 - (d) where the responsible Minister has given a direction to ASIO on the question whether—
 - (i) the collection of intelligence concerning a particular individual is, or is not, justified by reason of its relevance to security; or
 - (ii) the communication of intelligence concerning a particular individual would be for a purpose relevant to security,to inquire into whether that collection is justified on that ground or whether that communication would be for that purpose, as the case may be.
- (2) Subject to this section, the functions of the Inspector-General in relation to ASIS or DSD are—
- (a) at the request of the responsible Minister, of the Inspector-General's own motion or in response to a complaint made to the Inspector-General by a person who is an Australian citizen or a permanent resident, to inquire into any matter that relates to—
 - (i) the compliance by that agency with the laws of the Commonwealth and of the States and Territories;
 - (ii) the compliance by that agency with directions or guidelines given to that agency by the responsible Minister;
 - (iii) the propriety of particular activities of that agency; or
 - (iv) an act or practice of that agency that is or may be inconsistent with or contrary to any human right, being an act or practice

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referred to the Inspector-General by the Human Rights Commission;

- (b) at the request of the responsible Minister or of the Inspector-General's own motion, to inquire into the procedures of that agency relating to redress of grievances of employees of that agency; and
 - (c) at the request of the responsible Minister, to inquire into the effectiveness and appropriateness of the procedures of that agency relating to the legality or propriety of the activities of that agency.
- (3) Subject to this section, the functions of the Inspector-General in relation to JIO or ONA are—
- (a) at the request of the responsible Minister, to inquire into any matter that relates to—
 - (i) the compliance by that agency with the laws of the Commonwealth and of the States and Territories;
 - (ii) the propriety of particular activities of that agency; or
 - (iii) the effectiveness and appropriateness of the procedures of that agency relating to the legality or propriety of the activities of that agency; and
 - (b) at the request of the responsible Minister or of the Inspector-General's own motion, to inquire into any matter that relates to—
 - (i) an act or practice of that agency that is or may be inconsistent with or contrary to any human right, being an act or practice referred to the Inspector-General by the Human Rights Commission; or
 - (ii) the procedures of that agency relating to redress of grievances of employees of that agency.

(4) The Inspector-General shall not, of his or her own motion or in response to a complaint made to the Inspector-General, perform any of the functions set out in paragraph (2) (a) in relation to action taken by ASIS or DSD except to the extent that Australian citizens or permanent residents are affected or a law of the Commonwealth, a State or a Territory may be violated.

(5) The functions of the Inspector-General under sub-sections (1), (2) and (3) do not include inquiring into the matters to which a complaint made to the Inspector-General by an employee of an agency relates to the extent that those matters are directly related to the promotion, termination of appointment, discipline or remuneration of the complainant or to other matters relating to the complainant's employment.

(6) Subject to the succeeding provisions of this section, where a complaint is made to the Inspector-General by an employee of ASIO or ASIS, being a complaint the subject of which directly relates to the promotion, termination of appointment, discipline or remuneration of the complainant or to other matters relating to the complainant's employment, the functions of the

Inspector-General include inquiring into the matters to which the complaint relates.

(7) The Inspector-General shall not inquire into the matters to which a complaint made to the Inspector-General by an employee of ASIO relates to the extent that the employee was or is able to cause those matters to be reviewed by a body constituted by or including persons other than the Director-General of Security or employees of ASIO.

(8) The Inspector-General shall not—

- (a) inquire into a matter relating to an agency that occurred outside Australia, or before the commencement of this Act, without the approval of the responsible Minister;
- (b) inquire into action taken by a Minister except to the extent necessary in performing the functions of the Inspector-General referred to in sub-paragraphs (1) (a) (ii) and (2) (a) (ii) and paragraph (1) (d); or
- (c) inquire into a matter, other than a matter that is referred to the Inspector-General under sub-section 65 (1A) of the *Australian Security Intelligence Organization Act 1979*, that is or could be the subject of a review by the Security Appeals Tribunal.

(9) The Inspector-General may perform functions conferred on the Inspector-General by another Act.

Additional functions of Inspector-General

9. The Prime Minister may request the Inspector-General to inquire into a matter relating to an agency and, where such a request is made, the Inspector-General shall inquire into that matter if inquiring into that matter is within the functions of the Inspector-General referred to in section 8 (whether those functions may be performed following a request by a Minister or otherwise).

Division 2—Complaints

Form of complaints

10. (1) Subject to sub-section (2), a complaint may be made to the Inspector-General orally or in writing.

(2) Where a complaint is made orally to the Inspector-General, the Inspector-General shall—

- (a) put the complaint in writing; or
- (b) require the complainant to put the complaint in writing and, if such a requirement is made and the complainant does not put the complaint in writing, the Inspector-General may refuse to inquire into the complaint, or to inquire into the complaint further, until the complainant puts the complaint in writing.

Inquiry into complaint

11. (1) Where—

- (a) a complaint is made to the Inspector-General in respect of action taken by an agency; and
 - (b) inquiring into the action in response to a complaint is within the functions of the Inspector-General referred to in section 8,
- the Inspector-General shall, subject to this section, inquire into the action.

(2) Where a complaint is made to the Inspector-General in respect of action taken by an agency, the Inspector-General may decide not to inquire into the action or, if the Inspector-General has commenced to inquire into the action, decide not to inquire into the action further if the Inspector-General is satisfied that—

- (a) the complainant became aware of the action more than 12 months before the complaint was made;
- (b) the complaint is frivolous or vexatious or was not made in good faith; or
- (c) having regard to all the circumstances of the case, an inquiry, or further inquiry, into the action is not warranted.

(3) Where a complainant has exercised or exercises a right to cause the action to which a complaint relates to be reviewed by a court or a tribunal, the Inspector-General shall not inquire into, or continue to inquire into, the action unless the Inspector-General is of the opinion that there are special reasons for doing so.

(4) Where the Inspector-General is of the opinion that a complainant has or had a right to cause action to which a complaint relates to be reviewed by a court or a tribunal but has not exercised that right, the Inspector-General may decide not to inquire into the action or not to inquire into the action further if, in the opinion of the Inspector-General, it would be reasonable for the complainant to exercise, or would have been reasonable for the complainant to have exercised, that right.

(5) The Inspector-General shall not inquire into the matters to which a complaint of the kind referred to in sub-section 8 (6) relates in respect of action taken by an agency if the Inspector-General is satisfied that—

- (a) the procedures of that agency relating to redress of grievances of employees of that agency are adequate and effective;
- (b) the complainant has not pursued those procedures as far as practicable; or
- (c) the matters to which the complaint relates are not of sufficient seriousness or sensitivity to justify an inquiry into those matters.

Procedure where complaint not pursued

12. Where the Inspector-General decides not to inquire into, or not to inquire further into, a matter to which a complaint made to the Inspector-General relates in respect of action taken by an agency, the Inspector-

General shall, by notice in writing, inform the complainant, the responsible Minister and the head of the agency accordingly.

Special arrangements for persons in custody

13. (1) A person who is detained in custody is entitled—

(a) upon making a request to the person in whose custody he or she is detained or to any other person performing duties in connection with that detention—

(i) to be provided with facilities for preparing a complaint in writing to the Inspector-General under this Act, for furnishing in writing to the Inspector-General after the complaint has been made any other relevant information and for enclosing the complaint or other information (if any) in a sealed envelope; and

(ii) to have sent to the Inspector-General, without undue delay, a sealed envelope addressed to the Inspector-General; and

(b) to have delivered to him or her, without undue delay, any sealed envelope addressed to him or her and sent by the Inspector-General that comes into the possession or under the control of the person in whose custody he or she is detained or of any other person performing duties in connection with that detention.

(2) A sealed envelope referred to in sub-section (1) shall not be opened by a person other than the addressee or a person acting on behalf of the addressee.

(3) For the purposes of sub-sections (1) and (2), the Inspector-General may make arrangements with the appropriate authority of a State or Territory for the identification and delivery of sealed envelopes sent by the Inspector-General to persons detained in custody in that State or Territory.

Preliminary inquiries

14. Where a complaint is made to the Inspector-General in respect of action taken by an agency, the Inspector-General may, for the purpose of—

(a) determining whether the Inspector-General is authorised to inquire into the action; or

(b) if the Inspector-General is authorised to inquire into the action—determining whether the Inspector-General should inquire into the action,

make inquiries of the head of the agency in relation to the action.

Division 3—Inquiries

Inspector-General to inform Minister and agency head before commencing an inquiry

15. The Inspector-General shall, before commencing an inquiry into a matter relating to an agency, inform the responsible Minister and the head of the agency that the Inspector-General proposes to conduct the inquiry.

Inspector-General to consult with Auditor-General

16. The Inspector-General shall, before commencing an inquiry into a matter relating to an agency, have regard to the functions of the Auditor-General in relation to that agency and may consult with the Auditor-General in relation to that matter with a view to avoiding inquiries being conducted into that matter by both the Inspector-General and the Auditor-General.

Conduct of inquiries

17. (1) An inquiry by the Inspector-General shall be conducted in private and, subject to this Division, in such manner as the Inspector-General thinks fit.

(2) The Inspector-General may, for the purposes of this Act, obtain information from such persons, and make such inquiries, as the Inspector-General thinks fit.

(3) Subject to sub-sections (4) and (5), it is not necessary for a complainant or any other person to be afforded an opportunity to appear before the Inspector-General or before any other person in connection with an inquiry by the Inspector-General under this Act.

(4) The Inspector-General shall not make a report in relation to an inquiry conducted under this Act in which the Inspector-General sets out opinions that are, either expressly or impliedly, critical of an agency unless the Inspector-General has, before completing the inquiry, given the head of the agency a reasonable opportunity to appear before the Inspector-General and to make, either orally or in writing, submissions in relation to the matters that are the subject of the inquiry.

(5) Where the Inspector-General proposes to set out in a report in relation to an inquiry conducted under this Act opinions that are, either expressly or impliedly, critical of a person, the Inspector-General shall, unless doing so would, in the opinion of the Inspector-General, prejudice security, the defence of Australia or Australia's relations with other countries, give the person a reasonable opportunity to appear before the Inspector-General and to make, either orally or in writing, submissions in relation to the matters that are the subject of the inquiry.

(6) Where the Inspector-General gives, under sub-section (4) or (5), the head of an agency or another person an opportunity to appear before the Inspector-General, the person may, with the approval of the Inspector-General, be represented by another person.

(7) The Inspector-General may, at any time before completing an inquiry under this Act into a matter relating to an agency, discuss any matter that is relevant to the inquiry with the responsible Minister.

(8) The Inspector-General may, at any time before completing an inquiry under this Act into a matter relating to an agency, if it is appropriate to do

so, consult with the Prime Minister on any matter that is relevant to the inquiry.

(9) The Inspector-General shall not make a report in relation to an inquiry conducted under this Act in which the Inspector-General sets out opinions that are, either expressly or impliedly, critical of an agency unless the Inspector-General has, before completing the inquiry, given the responsible Minister a reasonable opportunity to discuss the proposed report with the Inspector-General.

(10) Where the Inspector-General forms the opinion that there is evidence that a person who is a member of an agency has been guilty of a breach of duty or of misconduct and that the evidence is of sufficient weight to justify the Inspector-General doing so, the Inspector-General shall bring the evidence to the notice of—

- (a) in a case where the person is the head of that agency—the responsible Minister; or
- (b) in any other case—the head of that agency.

Power to obtain information and documents

18. (1) Where the Inspector-General has reason to believe that a person is capable of giving information or producing documents relevant to a matter that is being inquired into by the Inspector-General under this Act, the Inspector-General may, by notice in writing given to the person, require the person, at such reasonable place and within such reasonable period as are specified in the notice—

- (a) to give to the Inspector-General, by writing signed by that person or, in the case of a body corporate, on behalf of the body corporate, any such information; or
- (b) to produce to the Inspector-General any such documents.

(2) Where documents are produced to the Inspector-General in accordance with a requirement under sub-section (1), the Inspector-General—

- (a) may take possession of, and may make copies of or take extracts from, the documents;
- (b) may retain possession of the documents for such period as is necessary for the purposes of the inquiry to which the documents relate; and
- (c) during that period shall permit a person who would be entitled to inspect any one or more of the documents if they were not in the possession of the Inspector-General to inspect at all reasonable times such of the documents as the person would be so entitled to inspect.

(3) Where the Inspector-General has reason to believe that a person is able to give information relevant to a matter that is being inquired into by the Inspector-General under this Act, the Inspector-General may, by notice in writing given to the person, require the person to attend before the Inspector-General, at such reasonable time and place as are specified in the notice, to answer questions relevant to the matter under inquiry.

(4) The Inspector-General may administer an oath or affirmation to a person required to attend before the Inspector-General under sub-section (3) and may examine the person on oath or affirmation.

(5) The oath or affirmation to be taken or made by a person for the purposes of this section is an oath or affirmation that the evidence the person will give will be true.

(6) A person is not excused from giving any information, producing a document or answering a question when required to do so under this section on the ground that the giving of the information, the production of the document or the answer to the question—

(a) would contravene the provisions of any other Act, would be contrary to the public interest or might tend to incriminate the person or make the person liable to a penalty; or

(b) would disclose legal advice given to a Minister, a Department or an authority of the Commonwealth,

but the information, the production of the document or the answer to the question is not admissible in evidence against the person in any court or in any proceedings before a person authorised to hear evidence except in a prosecution for—

(c) an offence against this section; or

(d) an offence against—

(i) section 6, 7 or 7A of the *Crimes Act 1914*; or

(ii) sub-section 86 (1) of that Act by virtue of paragraph (a) of that sub-section,

being an offence that relates to an offence against this section.

(7) A person who, without reasonable excuse—

(a) refuses or fails to be sworn or to make an affirmation or to give information or produce a document when required to do so under this section; or

(b) after being given a notice under sub-section (3), refuses or fails to comply with the notice or to answer a question that the Inspector-General requires the person to answer,

is guilty of an offence punishable on conviction—

(c) in the case of a natural person—by a fine not exceeding \$1,000 or imprisonment for a period not exceeding 6 months, or both; or

(d) in the case of a body corporate—by a fine not exceeding \$5,000.

(8) A person who is required to give information or to answer a question under this section and who gives information or an answer to the question that is, to the knowledge of the person, false or misleading in a material particular is guilty of an offence punishable on conviction—

(a) in the case of a natural person—by a fine not exceeding \$1,000 or imprisonment for a period not exceeding 6 months, or both; or

(b) in the case of a body corporate—by a fine not exceeding \$5,000.

(9) A person is not liable to any penalty under the provisions of any law of the Commonwealth or of a Territory by reason only of the person having given information, produced a document or answered a question when required to do so under this section.

Entry to premises occupied by an agency

19. (1) The Inspector-General may, after notifying the head of an agency, at any reasonable time, enter any place occupied by the agency for the purposes of an inquiry under this Act.

(2) Sub-section (1) does not authorise the Inspector-General to enter a place occupied by an agency if the place is, or is part of—

- (a) a place that is a prohibited place for the purposes of the *Defence (Special Undertakings) Act 1952* by virtue of section 7 of that Act; or
- (b) an area that is declared to be a restricted area under section 14 of that Act,

unless the responsible Minister has approved entry by the Inspector-General.

Security of agency documents

20. Where—

- (a) the Inspector-General requires access to documents in the possession of an agency for the purposes of an inquiry by the Inspector-General under this Act; and
- (b) those documents have a national security classification,

the Inspector-General shall, if he or she intends to remove those documents from the possession of the agency, make arrangements with the head of the agency for the protection of those documents while they remain in the Inspector-General's possession and for the return of those documents.

Division 4—Reports

Draft reports relating to inquiries

21. (1) Where the Inspector-General completes an inquiry under this Act into a matter relating to an agency, the Inspector-General shall prepare a draft report setting out the Inspector-General's conclusions and recommendations as a result of the inquiry and shall give a copy of the draft report to the head of the agency.

(2) Where—

- (a) the Inspector-General gives a copy of a draft report to the head of an agency; and
- (b) the head of the agency makes comments on the draft report within a reasonable time after being given a copy of the draft report,

the Inspector-General shall include in his or her final report in relation to the inquiry such of those comments as are relevant to the final report.

Reports relating to inquiries

22. (1) Where the Inspector-General completes an inquiry under this Act into a matter relating to an agency, the Inspector-General shall prepare a report setting out the Inspector-General's conclusions and recommendations as a result of the inquiry and shall give a copy of the report to the responsible Minister, to the head of the agency and, if the inquiry was conducted as a result of a request made by the Prime Minister in accordance with section 9, to the Prime Minister.

- (2) The Inspector-General shall include in such a report—
- (a) the Inspector-General's reasons for the conclusions and recommendations set out in the report; and
 - (b) if the Inspector-General considers that a person has been adversely affected by action taken by an agency and that the person should receive compensation for that action—a recommendation that the person receive compensation.

Advice to complainant

23. (1) Where the Inspector-General has conducted an inquiry under this Act following a complaint, the Inspector-General shall give to the complainant a written response relating to the inquiry.

(2) The Inspector-General shall not give such a response to the complainant until the responsible Minister and the Inspector-General have agreed that the giving to the complainant of a response in the terms proposed will not prejudice security, the defence of Australia or Australia's relations with other countries.

Action as a result of reports

24. (1) Where the Inspector-General has conducted an inquiry under this Act into a matter relating to an agency and has given a copy of the report in relation to the inquiry to the head of the agency, the head of the agency shall, if he or she takes or proposes to take any action as a result of the conclusions and recommendations set out in the report, give to the Inspector-General details of the action taken or proposed to be taken.

(2) Where, in the opinion of the Inspector-General, the head of an agency does not, as a result of the conclusions and recommendations set out in a report, take, within a reasonable period, action that is adequate and appropriate in the circumstances, the Inspector-General may discuss the matter with the responsible Minister and prepare a report relating to that matter and, where the Inspector-General prepares such a report, he or she shall give a copy of the report to the Prime Minister.

Reports concerning collection or communication of intelligence

25. Where—

- (a) the Inspector-General has, in accordance with paragraph 8 (1) (d), inquired into a question to which a direction given to ASIO by the responsible Minister relates; and

(b) the Inspector-General concludes that the direction given by the Minister to ASIO was not justified,
the Inspector-General shall, in addition to giving a copy of the report in relation to the inquiry to the responsible Minister, give a copy of the report to the Prime Minister.

PART III—ADMINISTRATIVE PROVISIONS

Terms and conditions of appointment

26. (1) The Inspector-General holds office for such period, not exceeding 3 years, as is specified in the instrument of appointment but, subject to subsection (2), is eligible for re-appointment.

(2) A person is not eligible to be appointed to the office of Inspector-General more than twice.

(3) A person holding office as Inspector-General, other than a person who is a Judge, holds office on such terms and conditions (if any) in respect of matters not provided for by this Act as are determined by the Governor-General.

(4) The Inspector-General may be appointed on a full-time or part-time basis.

(5) A person who has attained the age of 65 years shall not be appointed to the office of Inspector-General on a full-time basis and a person shall not be appointed to that office on a full-time basis for a period that extends beyond the day on which the person will attain the age of 65 years.

Remuneration and allowances

27. (1) Subject to this section, the Inspector-General shall be paid such remuneration as is determined by the Remuneration Tribunal but, if no determination of that remuneration is in operation, the Inspector-General shall be paid such remuneration as is prescribed.

(2) The Inspector-General shall be paid such allowances as are prescribed.

(3) Sub-sections (1) and (2) have effect subject to the *Remuneration Tribunals Act 1973*.

(4) If a person who is a Judge is appointed as Inspector-General, the person is not, while receiving salary or annual allowance as a Judge, entitled to remuneration under this Act.

Leave of absence

28. The Prime Minister may grant to a person appointed as Inspector-General leave of absence from duty on such terms and conditions as to remuneration or otherwise as the Prime Minister determines.

Resignation

29. A person appointed as Inspector-General may resign that office by writing signed by the Inspector-General and delivered to the Governor-General.

Termination of appointment

30. (1) The Governor-General may terminate the appointment of the Inspector-General by reason of misbehaviour or physical or mental incapacity.

(2) If the Inspector-General—

(a) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with creditors or makes an assignment of remuneration for their benefit;

(b) being a person holding office on a full-time basis—

(i) engages, except with the approval of the Prime Minister, in paid employment outside the duties of his or her office; or

(ii) is absent from duty, except on leave granted by the Prime Minister in accordance with section 28, for 14 consecutive days or for 28 days in any period of 12 months; or

(c) fails, without reasonable excuse, to comply with section 31,

the Governor-General shall terminate the appointment of the Inspector-General.

(3) A reference in sub-sections (1) and (2) to a person holding office as Inspector-General does not include a reference to a person who is a Judge.

(4) If a person appointed as Inspector-General is a Judge and that person ceases to be a Judge, the Governor-General may terminate the appointment of that person.

Disclosure of interests

31. The Inspector-General shall give written notice to the Prime Minister of all interests, pecuniary or otherwise, that the Inspector-General has or acquires and that could conflict with the proper performance of the Inspector-General's functions.

Staff

32. (1) The staff necessary to assist the Inspector-General shall be persons appointed or employed under the *Public Service Act 1922*.

(2) The Inspector-General has all the powers of, or exercisable by, a Secretary under the *Public Service Act 1922* so far as those powers relate to the branch of the Australian Public Service comprising the staff referred to in sub-section (1) as if that branch were a separate Department of the Australian Public Service.

PART IV—MISCELLANEOUS

Protection from civil actions

33. (1) Neither the Inspector-General nor a person acting on behalf of the Inspector-General is liable to an action or other proceeding for damages for or in relation to any act done or omitted to be done in good faith in performance or purported performance of any function, or in exercise or purported exercise of any power, conferred on the Inspector-General.

(2) Where—

- (a)** a complaint has been made to the Inspector-General; or
- (b)** a document has been produced, or information or evidence has been given, to the Inspector-General,

a person is not liable to an action, suit or proceeding in respect of loss, damage or injury of any kind suffered by another person by reason only that the complaint was made, the document was produced or the information or evidence was given.

Secrecy

34. (1) A person who is, or has at any time been, the Inspector-General or a member of the staff of the Inspector-General or who is acting, or has at any time acted, as the Inspector-General or as a member of the staff of the Inspector-General shall not, either directly or indirectly, except in the performance of his or her functions or duties or in the exercise of his or her powers under this Act—

- (a)** make a record of, or divulge or communicate to any person, any information acquired by reason of the person holding, or acting in, that office; or
- (b)** make use of any such information.

Penalty: \$5,000 or imprisonment for 2 years, or both.

(2) An offence against sub-section (1) is an indictable offence.

(3) Notwithstanding that an offence against sub-section (1) is an indictable offence, a court of summary jurisdiction may hear and determine proceedings in respect of such an offence if the court is satisfied that it is appropriate to do so and the defendant and the prosecutor consent.

(4) Where, in accordance with sub-section (3), a court of summary jurisdiction convicts a person of an offence against sub-section (1), the penalty that the court may impose is a fine not exceeding \$2,000 or imprisonment for a period not exceeding one year, or both.

(5) A person who is, or has at any time been, the Inspector-General or a member of the staff of the Inspector-General or who is acting, or has at any time acted, as the Inspector-General or as a member of the staff of the Inspector-General shall not be required to produce in a court any document of which the person has custody, or to which the person has access, by reason of the person's office or employment under or for the purposes of

this Act, or to divulge or communicate to a court any information obtained by the person by reason of that office or employment, except where it is necessary to do so for the purposes of this Act.

(6) In this section—

“court” includes any tribunal, authority or person having power to require the production of documents or the answering of questions;

“produce” includes permit access to.

(7) A reference in this section to information or a document shall be read as a reference to information or a document supplied for the purposes of this Act.

Annual report

35. (1) The Inspector-General shall, as soon as practicable after each 30 June, prepare and furnish to the Prime Minister a report of the operations of the Inspector-General during the year that ended on that 30 June.

(2) The Inspector-General shall include in a report prepared under sub-section (1) the Inspector-General's comments on any inquiry conducted by the Inspector-General in accordance with paragraph 8 (1) (d) during the year to which the report relates.

(3) The Prime Minister shall give a copy of a report furnished under sub-section (1) to the Leader of the Opposition in the House of Representatives, but it is the duty of the Leader of the Opposition to treat as secret any part of the report that is not tabled in a House of the Parliament.

(4) Subject to sub-section (5), the Prime Minister shall cause a copy of a report furnished under sub-section (1) to be laid before each House of the Parliament as soon as practicable after the report is received by the Prime Minister.

(5) For the purposes of sub-section (4), the Prime Minister may make such deletions from a report furnished under sub-section (1) as the Prime Minister considers necessary in order to avoid prejudice to security, the defence of Australia, Australia's relations with other countries or the privacy of individuals.

Regulations

36. The Governor-General may make regulations, not inconsistent with this Act, prescribing matters—

- (a) required or permitted by this Act to be prescribed; or
- (b) necessary or convenient to be prescribed for carrying out or giving effect to this Act.

*[Minister's second reading speech made in—
House of Representatives on 22 May 1986
Senate on 11 June 1986]*