



Australian Security Intelligence Organization Amendment Act 1986

No. 122 of 1986

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Australian Security Intelligence Organization Amendment Act 1986

No. 122 of 1986

An Act relating to the Australian Security Intelligence Organization

[Assented to 2 December 1986]

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

Short title, &c.

1. (1) This Act may be cited as the *Australian Security Intelligence Organization Amendment Act 1986*.

(2) The *Australian Security Intelligence Organization Act 1979*¹ is in this Act referred to as the Principal Act.

Commencement

2. (1) Subject to sub-section (2), this Act shall come into operation on a day to be fixed by Proclamation.

(2) Sections 33, 34, 35, 36 and 37 shall come into operation on a day to be fixed by Proclamation, being a day later than the day fixed under sub-section (1).

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Interpretation

3. Section 4 of the Principal Act is amended—

- (a) by omitting the definitions of “active measures of foreign intervention” and “acts of violence” and substituting the following definitions:

“‘acts of foreign interference’ means activities relating to Australia that are carried on by or on behalf of, are directed or subsidised by or are undertaken in active collaboration with, a foreign power, being activities that—

(a) are clandestine or deceptive and—

- (i) are carried on for intelligence purposes;
- (ii) are carried on for the purpose of affecting political or governmental processes; or
- (iii) are otherwise detrimental to the interests of Australia; or

(b) involve a threat to any person;

‘attacks on Australia’s defence system’ means activities that are intended to, and are likely to, obstruct, hinder or interfere with the performance by the Defence Force of its functions or with the carrying out of other activities by or for the Commonwealth for the purposes of the defence or safety of the Commonwealth;

‘Australia’, when used in a geographical sense, includes the external Territories;”;

- (b) by omitting the definition of “domestic subversion” and substituting the following definitions:

“‘foreign intelligence’ means intelligence relating to the capabilities, intentions or activities of a foreign power;”.

‘foreign power’ means—

- (a) a foreign government;
- (b) an entity that is directed or controlled by a foreign government or governments; or
- (c) a foreign political organisation;

‘intelligence or security agency’ means the Australian Secret Intelligence Service, the Office of National Assessments, that part of the Department of Defence known as the Defence Signals Directorate or that part of the Department of Defence known as the Joint Intelligence Organization;”;

- (c) by inserting after the definition of “Organization” the following definitions:

“‘permanent resident’ means a person—

(a) in the case of a natural person—

- (i) who is not an Australian citizen;

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- (ii) whose normal place of residence is situated in Australia;
 - (iii) whose presence in Australia is not subject to any limitation as to time imposed by law; and
 - (iv) who is not a prohibited non-citizen within the meaning of the *Migration Act 1958*; or
- (b) in the case of a body corporate—
- (i) which is incorporated under a law in force in a State or Territory; and
 - (ii) the activities of which are not controlled (whether directly or indirectly) by a foreign power;

‘politically motivated violence’ means—

- (a) acts or threats of violence or unlawful harm that are intended or likely to achieve a political objective, whether in Australia or elsewhere, including acts or threats carried on for the purpose of influencing the policy or acts of a government, whether in Australia or elsewhere;
- (b) acts that—
 - (i) involve violence or are intended or are likely to involve or lead to violence (whether by the persons who carry on those acts or by other persons); and
 - (ii) are directed to overthrowing or destroying, or assisting in the overthrow or destruction of, the government or the constitutional system of government of the Commonwealth or of a State or Territory;
- (c) acts that are offences punishable under the *Crimes (Foreign Incursions and Recruitment) Act 1978*, the *Crimes (Hijacking of Aircraft) Act 1972* or the *Crimes (Protection of Aircraft) Act 1973*; or
- (d) acts that—
 - (i) are offences punishable under the *Crimes (Internationally Protected Persons) Act 1976*; or
 - (ii) threaten or endanger any person or class of persons specified by the Minister for the purposes of this sub-paragraph by notice in writing given to the Director-General;

‘promotion of communal violence’ means activities that are directed to promoting violence between different groups of

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- persons in the Australian community so as to endanger the peace, order or good government of the Commonwealth;”;
- (d) by omitting sub-paragraphs (a) (iii), (iv) and (v) of the definition of “security” and substituting the following sub-paragraphs:
- “(iii) politically motivated violence;
 - (iv) promotion of communal violence;
 - (v) attacks on Australia’s defence system; or
 - (vi) acts of foreign interference;”;
- (e) by omitting the definition of “terrorism” and substituting the following definitions:
- “‘State’ includes the Northern Territory;
 - ‘Territory’ does not include the Northern Territory;
 - ‘violence’ includes the kidnapping or detention of a person.”.

4. Section 5 of the Principal Act is repealed and the following sections are substituted:

Extension of Act to external Territories

“5. This Act extends to every external Territory.

Copies of certain notices to be given to Inspector-General

“5A. Where the Minister gives a notice in writing to the Director-General for the purposes of sub-paragraph (d) (ii) of the definition of “politically motivated violence” in section 4, the Minister shall give a copy of the notice to the Inspector-General of Intelligence and Security.”.

Control of Organization

5. Section 8 of the Principal Act is amended by omitting sub-section (2) and substituting the following sub-sections:

“(2) Subject to sub-sections (4) and (5), in the performance of the Director-General’s functions under this Act, the Director-General is subject to the directions of the Minister.

“(3) If the Director-General requests that a direction of the Minister be put in writing, the Minister shall comply with the request.

“(4) The Minister is not empowered to override the opinion of the Director-General concerning the nature of the advice that should be given by the Organization.

“(5) The Minister is not empowered to override the opinion of the Director-General—

- (a) on the question whether the collection of intelligence by the Organization concerning a particular individual would, or would not, be justified by reason of its relevance to security; or
- (b) on the question whether a communication of intelligence concerning a particular individual would be for a purpose relevant to security,

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except by a direction contained in an instrument in writing that sets out the Minister's reasons for overriding the opinion of the Director-General.

“(6) The Minister shall, as soon as practicable after giving a direction in writing to the Director-General, cause a copy of the direction to be given to the Inspector-General of Intelligence and Security and, if the direction relates to a question referred to in sub-section (5), to the Prime Minister.

“(7) Where intelligence is collected or communicated pursuant to a direction referred to in sub-section (5), the Director-General shall cause a record in writing to be kept of the intelligence so collected or communicated.”.

6. After section 8 of the Principal Act the following section is inserted:

Guidelines

“8A. (1) The Minister may, from time to time, by notice in writing given to the Director-General, give to the Director-General guidelines to be observed in the performance by the Organization of its functions or the exercise of its powers.

“(2) The Minister shall, as soon as practicable after the commencement of this section, by notice in writing given to the Director-General, give to the Director-General guidelines to be observed in relation to the performance of that part of the Organization's functions that relates to politically motivated violence, and may, from time to time, vary or replace guidelines so given.

“(3) Subject to sub-section (4), the Minister shall cause a copy of any guidelines given under sub-section (1) or (2) to be laid before each House of the Parliament within 15 sitting days of that House after the guidelines were given.

“(4) Where the laying of a copy of guidelines before the Parliament in accordance with sub-section (3) would result in the disclosure of information that would, in the opinion of the Minister, be contrary to the public interest by reason that it would prejudice security, the defence of the Commonwealth, the conduct of the Commonwealth's international affairs or the privacy of individuals, the Minister may cause a copy of the guidelines to be laid before each House of the Parliament with such deletions as the Minister thinks necessary to avoid that result or decline to cause a copy to be laid before each House of the Parliament.

“(5) The Minister shall, in accordance with arrangements made between the Minister and the Leader of the Opposition in the House of Representatives, make available to the Leader of the Opposition a copy of any guidelines given under sub-section (1) or (2), but it is the duty of the Leader of the Opposition to treat as secret any part of those guidelines that has not been laid before a House of the Parliament.

“(6) The Minister shall, as soon as practicable after guidelines under sub-section (1) or (2) are given to the Director-General, give a copy of the guidelines to the Inspector-General of Intelligence and Security and, unless

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the Minister considers it inappropriate to do so, to the Parliamentary Joint Committee on the Australian Security Intelligence Organization.”.

7. After section 15 of the Principal Act the following section is inserted in Part II:

Delegation

“16. (1) The Director-General may, either generally or as otherwise provided by the instrument of delegation, by writing signed by the Director-General, delegate to an officer of the Organization all or any of the powers of the Director-General that relate to the management of the staff of the Organization or the financial management of the Organization.

“(2) A power so delegated, when exercised by the delegate, shall, for the purposes of this Act and the regulations, be deemed to have been exercised by the Director-General.

“(3) A delegation under this section does not prevent the exercise of a power by the Director-General.”.

Functions of Organization

8. Section 17 of the Principal Act is amended—

(a) by omitting “and” from the end of paragraph (1) (b); and

(b) by adding at the end of sub-section (1) the following paragraphs:

“(d) to advise Ministers, authorities of the Commonwealth and such other persons as the Minister, by notice in writing given to the Director-General, determines on matters relating to protective security; and

(e) to obtain within Australia foreign intelligence pursuant to section 27A of this Act or section 11A of the *Telecommunications (Interception) Act 1979*, and to communicate any such intelligence in accordance with this Act or the *Telecommunications (Interception) Act 1979*.”.

9. After section 17 of the Principal Act the following section is inserted:

Act not concerned with lawful dissent, &c.

“17A. This Act shall not limit the right of persons to engage in lawful advocacy, protest or dissent and the exercise of that right shall not, by itself, be regarded as prejudicial to security, and the functions of the Organization shall be construed accordingly.”.

Communication of intelligence, &c.

10. Section 18 of the Principal Act is amended—

(a) by adding at the end of sub-section (2) the following:

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

(b) by omitting paragraphs (3) (a) and (b) and substituting the following paragraph:

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- “(a) where the information relates, or appears to relate, to the commission, or intended commission, of an indictable offence against the law of the Commonwealth or of a State or Territory—the information may be communicated to an officer of the Police Force of a State or Territory, to a member or special member of the Australian Federal Police or to a member, or a member of the staff, of the National Crime Authority; or”;
- (c) by inserting in paragraph (3) (c) “or the officer so authorised” after “Director-General”;
- (d) by omitting from paragraph (3) (c) “the Office of National Assessments” and substituting “an intelligence or security agency”;
- and
- (e) by omitting sub-section (4).

Co-operation with other authorities

11. Section 19 of the Principal Act is amended by adding at the end the following sub-section:

“(2) Notwithstanding paragraph 17 (1) (b), the Director-General or an officer authorised by the Director-General may, where the Organization is co-operating with an authority of another country in accordance with paragraph (1) (c), communicate to an officer of that authority information that has come into the possession of the Organization in the course of performing its functions under section 17, being information that is relevant to the security of that other country and that could not, apart from this sub-section, be communicated to that officer.”.

Interpretation

12. Section 22 of the Principal Act is amended—

- (a) by inserting before the definition of “examination” the following definition:
 - “ ‘communicate’ includes cause to be communicated;”;
- (b) by omitting “spoken words” from the definition of “listening device” and substituting “words, images, sounds or signals”;
- (c) by omitting “or sounds” from the definition of “record” and substituting “, sounds or signals”; and
- (d) by adding at the end the following definition:
 - “ ‘signals’ includes light emissions and electromagnetic emissions.”.

Search warrants

13. Section 25 of the Principal Act is amended—

- (a) by inserting in sub-section (1) “or other things” after “records” (first occurring);

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- (b) by inserting in paragraph (1) (b) “or other things” after “records” (wherever occurring);
- (c) by omitting paragraph (1) (c) and substituting the following paragraph:
 - “(c) to inspect or otherwise examine any records or any other things found in the premises, and to make copies or transcripts of any record so found that appears to be relevant to the collection of intelligence by the Organization in accordance with this Act; and”;
- (d) by inserting in paragraph (1) (d) “or other thing” after “record” (wherever occurring);
- (e) by inserting in paragraph (1) (d) “, in the case of a record, for the purpose of” after “examination, and”;
- (f) by omitting sub-section (2).

Use of listening devices

14. Section 26 of the Principal Act is amended—

- (a) by omitting from sub-section (1) “while they are being spoken by another person” and substituting “, images, sounds or signals being communicated by another person (in this sub-section referred to as the ‘communicator’)”;
- (b) by omitting paragraphs (1) (a) and (b) and substituting the following paragraphs:
 - “(a) the communicator intends, or should reasonably expect, those words, images, sounds or signals to be communicated to the first-mentioned person or to a class or group of persons in which the first-mentioned person is included;
 - (b) the first-mentioned person does so with the consent of the communicator; or”;
- (c) by omitting from paragraph (1) (c) “he” and substituting “the first-mentioned person”;
- (d) by omitting from sub-section (3) “words spoken” (wherever occurring) and substituting “words, images, sounds or signals communicated”;
- (e) by inserting in sub-section (3) “or any other premises specified in the warrant from which words, images, sounds or signals communicated by or to that person while that person is in those first-mentioned premises can be listened to or recorded with the use of a listening device,” after “is likely to be,”;
- (f) by omitting from sub-section (4) “in relation to particular premises” and substituting “to listen to or record words, images, sounds or signals communicated from or to particular premises”;

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- (g) by omitting from sub-section (4) “words spoken” (wherever occurring) and substituting “words, images, sounds or signals communicated”; and
- (h) by inserting in sub-section (4) “, or any other premises specified in the warrant from which words, images, sounds or signals communicated by or to any person while the person is in those first-mentioned premises can be listened to or recorded with the use of a listening device,” after “those premises” (last occurring).

Inspection of postal articles

15. Section 27 of the Principal Act is amended by inserting in sub-section (1) “or section 27A” after “this section”.

16. After section 27 of the Principal Act the following section is inserted:

Warrants for the performance of functions under paragraph 17 (1) (e)

“27A. (1) Where—

- (a) the Director-General gives a notice in writing to the Minister requesting the Minister to issue a warrant under this section in relation to premises or a person identified in the notice authorising the Organization to do acts or things referred to in whichever of sub-sections 25 (1), 26 (3) or (4) or 27 (2) or (3) is or are specified in the notice for the purpose of obtaining foreign intelligence relating to a matter specified in the notice; and
- (b) the Minister is satisfied, on the basis of advice received from the relevant Minister, that the collection of foreign intelligence relating to that matter is important in relation to the defence of the Commonwealth or to the conduct of the Commonwealth’s international affairs,

the Minister may, by warrant under his or her hand, authorise the Organization, subject to any conditions or restrictions that are specified in the warrant, to do such of those acts or things in relation to those premises or that person as the Minister considers appropriate in the circumstances and are specified in the warrant for the purpose of obtaining that intelligence.

“(2) Where a warrant under this section authorises entry on premises, the warrant shall state whether entry is authorised to be made at any time of the day or night or only during specified hours and may, if the Minister thinks fit, provide that entry may be made without permission first sought or demand made and authorise measures that the Minister is satisfied are necessary for that purpose.

“(3) A warrant under this section shall specify the period for which it is to remain in force, being a period not exceeding—

- (a) in a case where the warrant authorises the doing of acts or things referred to in sub-section 25 (1)—7 days;

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- (b) in a case where the warrant authorises the doing of acts or things referred to in sub-section 26 (3) or (4)—6 months; or
- (c) in a case where the warrant authorises the doing of acts or things referred to in sub-section 27 (2) or (3)—90 days,

but may be revoked by the Minister at any time before the end of the period so specified.

“(4) Sub-section (3) shall not be construed as preventing the issue of any further warrant.

“(5) Nothing in this section, or in a warrant under this section, applies to or in relation to the use of a listening device for a purpose that would, for the purposes of the *Telecommunications (Interception) Act 1979*, constitute the interception of a communication passing over a telecommunications system controlled by the Australian Telecommunications Commission.

“(6) Where the Minister issues or revokes a warrant under this section authorising the doing of acts or things referred to in sub-section 27 (2) or (3), the Minister shall—

- (a) forthwith cause the Australian Postal Commission to be informed of the issue of the warrant or of the revocation; and
- (b) cause a copy of the warrant or of the instrument of revocation, certified in writing by the Minister to be a true copy, to be forwarded as soon as practicable to that Commission.

“(7) The Australian Postal Commission shall give to a person acting pursuant to a warrant under this section authorising the doing of acts or things referred to in sub-section 27 (2) or (3) all reasonable assistance.

“(8) Nothing in the *Postal Services Act 1975* shall be taken to prohibit the doing of anything pursuant to, or for the purposes of, a warrant under this section.

“(9) The Director-General shall not request the issue of a warrant under this section for the purpose of collecting information concerning an Australian citizen or a permanent resident.

“(10) The reference in sub-section (1) to conditions or restrictions includes a reference to conditions or restrictions designed to minimise the obtaining by the Organization, pursuant to a warrant issued under that sub-section, of information that is not publicly available concerning Australian citizens or permanent residents, or to minimise the retention of information of that kind.”.

17. Section 31 of the Principal Act is repealed and the following section is substituted:

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Certain records obtained under a warrant to be destroyed

“31. Where—

- (a) by virtue of a warrant under this Division, a record or copy has been made;
- (b) the record or copy is in the possession or custody, or under the control, of the Organization; and
- (c) the Director-General is satisfied that the record or copy is not required for the purposes of the performance of functions or exercise of powers under this Act,

the Director-General shall cause the record or copy to be destroyed.”.

Director-General to report to Minister

18. Section 34 of the Principal Act is amended by omitting “function of obtaining intelligence relevant to security” and substituting “functions”.

Interpretation

19. Section 35 of the Principal Act is amended—

- (a) by omitting the definition of “adverse or qualified security assessment” and substituting the following definition:

“‘adverse security assessment’ means a security assessment in respect of a person that contains—

- (a) any opinion or advice, or any qualification of any opinion or advice, or any information, that is or could be prejudicial to the interests of the person; and
 - (b) a recommendation that prescribed administrative action be taken or not be taken in respect of the person, being a recommendation the implementation of which would be prejudicial to the interests of the person;”;
- (b) by inserting after the definition of “presidential member” the following definition:

“‘qualified security assessment’ means a security assessment in respect of a person that—

- (a) contains any opinion or advice, or any qualification of any opinion or advice, or any information, that is or could be prejudicial to the interests of the person; and
- (b) does not contain a recommendation of the kind referred to in paragraph (b) of the definition of ‘adverse security assessment’,

whether or not the matters contained in the assessment would, by themselves, justify prescribed administrative action

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being taken or not being taken in respect of the person to the prejudice of the interests of the person;” and

- (c) by inserting “, being a qualification or comment that relates or that could relate to that question” at the end of the definition of “security assessment” or “assessment”.

Part not to apply to certain assessments

20. Section 36 of the Principal Act is amended by inserting in paragraph (1) (b) “(other than an assessment made for the purposes of sub-section 13 (1) of the *Migration Act 1958*)” after “section 35”.

Applications to Tribunal

21. Section 54 of the Principal Act is amended by adding at the end “and a statement indicating any part or parts of the assessment with which the applicant does not agree and setting out the grounds on which the application is made”.

Notice of application

22. Section 56 of the Principal Act is amended by omitting “notice of the application” and substituting “a copy of the application and of the statement lodged with the application”.

Findings of Tribunal

23. Section 60 of the Principal Act is amended—

- (a) by omitting from sub-section (1) “or as to the question to which the assessment relates”; and
- (b) by inserting after sub-section (1) the following sub-section:

“(1A) The Tribunal shall not make findings in relation to an assessment that would, under section 61, have the effect of superseding any information that is, under sub-section 37 (2), deemed to be part of the assessment unless those findings state that, in the opinion of the Tribunal, the information is incorrect, incorrectly represented or could not reasonably be relevant to the requirements of security.”.

24. After section 60 of the Principal Act the following section is inserted:

Comments of Tribunal on Organization

“60A. (1) The Tribunal may attach to a copy of findings to be given to the Director-General under section 60 comments the Tribunal wishes to make on matters relating to procedures or practices of the Organization that have come to the attention of the Tribunal as a result of a review.

“(2) The Tribunal shall cause a copy of any such comments to be given to the Minister.”.

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Effect of findings

25. Section 61 of the Principal Act is amended by omitting sub-section (2).

Review of findings

26. Section 63 of the Principal Act is amended by inserting in sub-section (1) "(other than a review of a security assessment made for the purposes of sub-section 13 (1) of the *Migration Act 1958*)" after "review" (first occurring).

Reference of certain matters to Tribunal by Minister

27. Section 65 of the Principal Act is amended by inserting after sub-section (1) the following sub-section:

"(1A) For the purposes of determining whether it is desirable to make a requirement of the Tribunal under sub-section (1) in relation to a matter, the Minister may request the Inspector-General of Intelligence and Security to inquire into the matter or into a specified aspect of the matter and to report to the Minister the results of the inquiry, and the Inspector-General shall comply with any such request."

28. After section 72 of the Principal Act the following section is inserted:

Costs

"72A. Where—

- (a) a person makes an application under section 54 to the Tribunal for a review of an adverse or qualified security assessment in respect of the person;
- (b) the applicant was, in the opinion of the Tribunal, successful, or substantially successful, in the application for review; and
- (c) the Tribunal is satisfied that it is appropriate to do so in all the circumstances of the case,

the Tribunal may order that the costs reasonably incurred by the applicant in connection with the application, or such part of those costs as is determined by the Tribunal, be paid by the Commonwealth."

Failure of witness to attend

29. Section 74 of the Principal Act is amended by omitting "Penalty: \$1,000 or imprisonment for 3 months" and substituting the following:

"Penalty:

- (c) in the case of a natural person—\$1,000 or imprisonment for 6 months, or both; or
- (d) in the case of a body corporate—\$5,000."

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Refusal to be sworn or to answer questions

30. Section 75 of the Principal Act is amended by omitting "\$500 or imprisonment for 3 months" and substituting "\$1,000 or imprisonment for 6 months, or both".

Contempt of Tribunal

31. Section 76 of the Principal Act is amended by omitting "Penalty: \$1,000 or imprisonment for 1 year" and substituting the following:

"Penalty:

- (f) in the case of a natural person—\$2,000 or imprisonment for 1 year, or both; or
- (g) in the case of a body corporate—\$10,000."

Secrecy

32. Section 81 of the Principal Act is amended by omitting from sub-section (1) "\$2,000 or imprisonment for 2 years" and substituting "\$5,000 or imprisonment for 2 years, or both".

Employment of officers and employees

33. Section 84 of the Principal Act is amended—

- (a) by omitting from paragraph (1) (a) ", under agreements in writing,"; and
- (b) by omitting sub-section (3).

Designation of offices, &c.

34. Section 85 of the Principal Act is amended by omitting "Chairman of the Public Service Board, the Secretary to the Attorney-General's Department and the Director-General" and substituting "Director-General, with the approval of the Public Service Board".

Conditions of employment

35. Section 86 of the Principal Act is amended by omitting "Chairman of the Public Service Board, the Secretary to the Attorney-General's Department and the Director-General" and substituting "Director-General, with the approval of the Public Service Board".

36. After section 87 of the Principal Act the following section is inserted:

Saving of existing agreements

"88. A person who, immediately before the commencement of this section, was employed in the Organization under an agreement made under section 84 shall, until he or she agrees to accept terms and conditions determined by the Director-General under sections 85 and 86, continue to be employed upon the terms and conditions specified in that agreement, as modified from time to time by agreement between the person and the Director-General."

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Repeal of section 90

37. Section 90 of the Principal Act is repealed.

Publication of identity of officer of Organization

38. Section 92 of the Principal Act is amended—

- (a) by inserting in sub-section (1) “(other than a member of the Parliamentary Joint Committee on the Australian Security Intelligence Organization)” after “person” (first occurring);
- (b) by omitting from sub-section (1) “periodical”;
- (c) by inserting in sub-section (1) “or, subject to sub-section (1B), is a former officer (not including a former Director-General), employee or agent of the Organization or is in any way connected with such a former officer, employee or agent” after “agent” (last occurring);
- (d) by omitting from sub-section (1) “Penalty: \$1,000 or imprisonment for 1 year” and substituting:
 - “Penalty:
 - (a) in the case of a natural person—\$2,000 or imprisonment for 1 year, or both; or
 - (b) in the case of a body corporate—\$10,000.”;
- (e) by inserting after sub-section (1) the following sub-sections:
 - “(1A) A member of the Committee referred to in sub-section (1) shall not, except with the consent in writing of the Minister or of the Director-General, make public or authorise the publication of, any information acquired by the person by reason of being such a member, being information from which it could reasonably be inferred that a person having a particular name or otherwise identified, or a person residing at a particular address, is an officer (not including the Director-General), employee or agent or is in any way connected with such an officer, employee or agent or, subject to sub-section (1B), is a former officer (not including a former Director-General), employee or agent of the Organization or is in any way connected with such a former officer, employee or agent.
 - Penalty: \$2,000 or imprisonment for one year, or both.
 - “(1B) Sub-sections (1) and (1A) do not apply in relation to action taken in respect of a former officer, employee or agent of the Organization—
 - (a) who has consented in writing to the taking of that action; or
 - (b) who has caused or permitted the fact that the person is a former officer, employee or agent of the Organization to be made public.”;
- (f) by inserting in sub-section (2) “(other than proceedings of the Committee referred to in sub-section (1))” after “Parliament”; and

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- (g) by omitting from sub-section (3) “sub-section (1)” and substituting “this section”.

39. After Part V of the Principal Act the following Part is inserted:

**“PART VA — PARLIAMENTARY JOINT COMMITTEE ON THE
AUSTRALIAN SECURITY INTELLIGENCE ORGANIZATION**

Interpretation

“92A. In this Part, unless the contrary intention appears—

‘Committee’ means the Parliamentary Joint Committee on the Australian Security Intelligence Organization for the time being constituted under this Part;

‘member’ means a member of the Committee, and includes the Presiding Member;

‘Presiding Member’ means the Presiding Member of the Committee.

Joint Committee on the Australian Security Intelligence Organization

“92B. (1) As soon as practicable after the commencement of this Part and after the commencement of the first session of each Parliament, a joint committee of members of the Parliament to be known as the Parliamentary Joint Committee on the Australian Security Intelligence Organization shall be appointed.

“(2) The Committee shall consist of 7 members, 3 of whom shall be Senators and 4 of whom shall be members of the House of Representatives.

“(3) The members of the Committee who are Senators shall be appointed by resolution of the Senate on the nomination of the Leader of the Government in the Senate.

“(4) The members of the Committee who are members of the House of Representatives shall be appointed by resolution of that House on the nomination of the Prime Minister.

“(5) Before nominating members of a House of the Parliament for appointment as members of the Committee, the Prime Minister and the Leader of the Government in the Senate shall consult with the Leader of each recognised political party that is represented in that House and that does not form part of the Government.

“(6) The Prime Minister and the Leader of the Government in the Senate shall, in nominating members of a House of the Parliament for appointment as members of the Committee, 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.

“(7) A person is not eligible for appointment as a member of the Committee if the person is—

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- (a) a Minister;
- (b) the President of the Senate;
- (c) the Speaker of the House of Representatives; or
- (d) the Deputy President and Chairman of Committees of the Senate or the Chairman of Committees of the House of Representatives.

“(8) Subject to sub-sections (9) and (10), a member holds office during the pleasure of the House of the Parliament by which the member was appointed.

“(9) A person who is a member ceases to hold office as a member—

- (a) when the House of Representatives expires by effluxion of time or is dissolved;
- (b) if the person becomes the holder of an office specified in any of the paragraphs of sub-section (7);
- (c) if the person ceases to be a member of the House of the Parliament by which the person was appointed; or
- (d) if the person resigns the office as provided by sub-section (10).

“(10) A member may resign the office of member by writing signed by the member and delivered to the President of the Senate or the Speaker of the House of Representatives, as the case requires.

“(11) Either House of the Parliament may appoint one of its members to fill a vacancy amongst the members of the Committee appointed by that House.

Functions of Committee

“92C. (1) Subject to this section, the functions of the Committee are—

- (a) to review aspects of the activities of the Organization that are referred to the Committee in accordance with sub-section (2); and
- (b) to report to the Minister and, subject to section 92N, to each House of the Parliament, the Committee’s comments and recommendations following such a review.

“(2) Where—

- (a) the Minister refers a particular aspect of the activities of the Organization to the Committee for review; or
- (b) a House of the Parliament passes a motion that the Committee review a particular aspect of the activities of the Organization,

the Committee shall, subject to sub-section (4), review that aspect.

“(3) The Committee may, by resolution, request the Minister to refer a particular aspect of the activities of the Organization to the Committee under paragraph (2) (a) and, where the Committee passes such a resolution, the Minister may refer that aspect to the Committee for review.

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- “(4) The functions of the Committee do not include—
- (a) reviewing a matter that relates to the obtaining or communicating by the Organization of foreign intelligence;
 - (b) reviewing an aspect of the activities of the Organization that does not affect any person who is an Australian citizen or a permanent resident;
 - (c) reviewing a matter, including a matter that relates to intelligence collection methods or sources of information, that is operationally sensitive; or
 - (d) originating inquiries into individual complaints concerning the activities of the Organization.

Presiding Member

“92D. (1) There shall be a Presiding Member of the Committee who shall be elected by the members from time to time.

“(2) Subject to sub-section (3), the Presiding Member holds office during the pleasure of the Committee.

“(3) A person holding office as Presiding Member ceases to hold that office if—

- (a) the person ceases to be a member; or
- (b) the person resigns that office as provided by sub-section (4).

“(4) A person holding office as Presiding Member may resign that office by writing signed by the person presented to a meeting of the Committee.

Meetings of Committee

“92E. (1) The Committee may meet at such times and, subject to sub-section (3), at such places within Australia as the Committee determines by resolution or, subject to any resolution of the Committee, as the Presiding Member determines.

“(2) The Committee may meet and transact business notwithstanding the prorogation of the Parliament.

“(3) Before the Committee or the Presiding Member determines a place of meeting under sub-section (1), the Presiding Member shall obtain advice from the Director-General as to the suitability of that place.

“(4) The Presiding Member shall preside at all meetings of the Committee at which he or she is present.

“(5) If the Presiding Member is not present at a meeting of the Committee, the members present shall elect one of their number to preside at the meeting, and a member so elected may exercise, in relation to that meeting and any matter arising out of that meeting, any of the powers of the Presiding Member.

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“(6) At a meeting of the Committee—

- (a) 4 members constitute a quorum;
- (b) all questions shall be decided by a majority of the votes of the members present and voting; and
- (c) the member presiding at the meeting has a deliberative vote and, in the event of an equality of votes, also has a casting vote.

“(7) Where the members present at a meeting of the Committee do not vote unanimously on a question, there shall, if a member so requires, be recorded in the minutes of the meeting and in the report of the Committee to the Minister and, subject to section 92N, in the report of the Committee to the Parliament, on the matter to which the question relates—

- (a) the names of the members who voted and the manner in which each such member voted;
- (b) the names of the members who abstained from voting and the fact that they abstained from voting; and
- (c) if the question was determined by the casting vote of the member presiding — the name of the member presiding and the fact that the question was so determined.

“(8) The Committee shall keep minutes of its proceedings.

Proceedings of Committee

“92F. (1) Subject to this Part, the proceedings of the Committee shall be conducted in such manner as the Committee determines.

“(2) Where a matter is referred to the Committee for review, the Committee shall conduct the review in private unless the Committee, with the approval of the Minister, otherwise determines.

“(3) At a review conducted in private, the Committee may, having regard to the requirements of security and to such other matters as the Committee thinks fit, give directions as to the persons who may be present.

“(4) The Committee shall ensure that any documents having a national security classification provided to the Committee—

- (a) are, while in the custody of the Committee, kept at a place approved for the purpose by the Director-General; and
- (b) are returned to the appropriate Department or agency as soon as possible after the members have examined them.

Publication of evidence, &c.

“92G. (1) Where the Committee conducts a review in private, a person (including a member) shall not disclose or publish any evidence taken by the Committee at the review or the contents of any documents produced to the Committee for the purposes of the review without the authority in writing of—

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- (a) except in a case to which paragraph (b) applies—the person who gave the evidence or produced the document; or
- (b) in a case where the person who gave the evidence or produced the document is an officer of the Organization—the Director-General.

Penalty:

- (c) in the case of a natural person—\$5,000 or imprisonment for 2 years, or both; or
- (d) in the case of a body corporate—\$25,000.

“(2) Nothing in sub-section (1) prohibits—

- (a) the disclosure or publication of evidence or of the contents of a document if that evidence or those contents has or have already been lawfully published; or
- (b) the disclosure or publication by a person of a matter of which the person has become aware otherwise than by reason, directly or indirectly, of the giving of evidence before, or the production of a document to, the Committee.

“(3) Subject to sub-section (4), the Committee may, in its discretion, disclose or publish or authorise the disclosure or publication of evidence taken in private before the Committee, but this sub-section does not affect the need for obtaining the authority of a witness under sub-section (1).

“(4) The Committee shall not disclose or publish evidence or authorise the disclosure or publication of evidence unless the Committee, after obtaining advice from the Minister, is satisfied that that disclosure or publication would not disclose a matter that the Committee is not, under section 92N, permitted to disclose in a report to a House of the Parliament.

Power to obtain information and documents

“92H. (1) Where the Committee has reason to believe that a person (other than the Director-General or an officer, employee or agent of the Organization) is capable of giving evidence or producing documents relevant to a matter that has been referred to the Committee, the Presiding Member or a member authorised by the Committee by resolution may, subject to section 92K, by notice in writing given to the person, require the person to appear before the Committee to give evidence, or to produce to the Committee any such documents, on a day specified in the notice, not being a day earlier than 5 days after the notice is given to the person.

“(2) Where a member gives a notice to a person under sub-section (1), the member shall forthwith give a copy of the notice to the Minister.

“(3) A person who has been given a notice under sub-section (1) requiring the person to appear before the Committee is entitled to be paid by the Commonwealth such allowances for the person’s travelling and other expenses as are prescribed.

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Provision of information to Committee by Organization

“92J. (1) Where the Committee has reason to believe that the Director-General is capable of giving evidence relevant to a matter that has been referred to the Committee, the Presiding Member or a member authorised by the Committee by resolution may, by notice in writing given to the Director-General, require the Director-General to appear before the Committee to give evidence relating to the matter.

“(2) Where the Director-General has been given a notice under subsection (1), the Director-General, an officer of the Organization nominated by the Director-General or the Director-General and an officer of the Organization nominated by the Director-General shall appear before the Committee to give evidence.

“(3) Where the Committee has reason to believe that the Director-General is capable of producing documents relevant to a matter that has been referred to the Committee, the Presiding Member or a member authorised by the Committee by resolution may, by notice in writing given to the Director-General, require the Director-General to produce to the Committee any such documents on a day specified in the notice, not being a day earlier than 5 days after the notice is given to the Director-General.

“(4) Where a member gives a notice to the Director-General under subsection (3), the member shall forthwith give a copy of the notice to the Minister.

Certificates by Minister

“92K. (1) Where—

- (a) a person is about to give or is giving evidence to the Committee or is about to produce a document to the Committee (whether or not required to do so under section 92H or 92J); and
- (b) the Minister is of the opinion that, for reasons relevant to security—
 - (i) the person (not being the Director-General) should not give evidence before the Committee;
 - (ii) the person should not give evidence before the Committee relating to a particular matter;
 - (iii) in a case where a person has commenced to give evidence before the Committee—
 - (A) the person should not continue to give evidence before the Committee; or
 - (B) the person should not give, or continue to give, evidence relating to a particular matter before the Committee;
 - (iv) the person should not produce documents to the Committee; or
 - (v) the person should not produce documents of a particular kind to the Committee,

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the Minister may give to the Presiding Member or to the member exercising the powers of the Presiding Member a certificate stating that the Minister is so satisfied and, in a case to which sub-paragraph (b) (ii) or (v) or sub-sub-paragraph (b) (iii) (B) applies, specifying the matter in relation to which the Minister is satisfied that the person should not give, or continue to give, evidence, or specifying the kind of documents that the Minister is satisfied the person should not produce, as the case requires.

“(2) The Minister shall give a copy of a certificate under sub-section (1) to the President of the Senate, to the Speaker of the House of Representatives and to the person required to give evidence or produce documents.

“(3) A decision of the Minister under sub-section (1) shall not be questioned in any court or tribunal.

“(4) Where the Minister gives a certificate under sub-section (1) in relation to a person—

- (a) if the certificate states that the person should not give, or continue to give, evidence before the Committee—the Committee shall not receive, or continue to receive, as the case may be, evidence from the person;
- (b) if the certificate states that the person should not give, or continue to give, evidence before the Committee relating to a particular matter—the Committee shall not receive, or continue to receive, as the case may be, evidence from the person relating to that matter; or
- (c) if the certificate states that the person should not produce documents, or documents of a particular kind, to the Committee—the Committee shall not receive documents, or documents of that kind, as the case may be, from the person.

Evidence

“92L. (1) The Committee may take evidence on oath or affirmation and the Presiding Member or the member exercising the powers of the Presiding Member may administer an oath or affirmation to a witness appearing before the Committee.

“(2) The oath or affirmation to be taken or made by a person for the purpose of sub-section (1) is an oath or affirmation that the evidence the person will give will be true.

Offences relating to giving evidence, &c.

“92M. (1) Subject to sub-section (2), a person who has been given a notice under sub-section 92H (1) or 92J (1) requiring the person to appear before the Committee shall not, without reasonable excuse—

- (a) fail to attend as required by the notice;

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- (b) fail to attend and report from day to day unless excused, or released from further attendance, by the Committee;
- (c) refuse or fail to be sworn or to make an affirmation; or
- (d) refuse or fail to answer a question that the Committee requires the person to answer.

Penalty:

- (e) in the case of a natural person—\$1,000 or imprisonment for 6 months, or both; or
- (f) in the case of a body corporate—\$5,000.

“(2) Where the Director-General has nominated an officer of the Organization for the purposes of sub-section 92J (2)—

- (a) except in a case to which paragraph (b) applies—a reference in sub-section (1) to a person who has been given a notice under sub-section 92J (1) is a reference to the nominated officer; or
- (b) in a case where both the Director-General and the nominated officer appear before the Committee—neither the Director-General nor the nominated officer shall, without reasonable excuse—
 - (i) fail to attend and report from day to day unless excused, or released from further attendance, by the Committee;
 - (ii) refuse or fail to be sworn or to make an affirmation; or
 - (iii) refuse or fail to answer a question that the Committee requires the person to answer.

Penalty: \$1,000 or imprisonment for 6 months, or both.

“(3) A person who has been given a notice under sub-section 92H (1) or 92J (3) requiring the person to produce a document to the Committee shall not, without reasonable excuse, refuse or fail to produce the document.

Penalty:

- (a) in the case of a natural person—\$1,000 or imprisonment for 6 months, or both; or
- (b) in the case of a body corporate—\$5,000.

“(4) A person who is required to give evidence under section 92H or 92J shall not give evidence that is, to the knowledge of the person, false or misleading in a material particular.

Penalty:

- (a) in the case of a natural person—\$5,000 or imprisonment for 2 years, or both; or
- (b) in the case of a body corporate—\$25,000.

“(5) Without limiting by implication the references in this section to ‘reasonable excuse’, it is a reasonable excuse for the purposes of this section for a person to refuse to produce a document to the Committee or to refuse to answer a question that the Committee has required the person to answer

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if the production of the document or the answer to the question would tend to incriminate the person.

Restrictions on disclosure to Parliament

“92N. (1) The Committee shall not, in a report to a House of the Parliament, disclose—

- (a) the identity of a person who is or has been an officer (not including the Director-General), employee or agent of the Organization (other than a person the disclosing of whose identity is not an offence under section 92), or any information from which the identity of such a person could reasonably be inferred; or
- (b) classified material or information on the methods, sources, targets or results of the operations or procedures of the Organization the public disclosure of which would, or would be likely to, prejudice the performance by the Organization of its functions.

“(2) The Committee shall, before presenting a report of the Committee to a House of the Parliament, obtain the advice of the Minister as to whether the disclosure of any part of the report would, or would be likely to, disclose a matter referred to in paragraph (1) (a) or (b).

Continuance of evidence

“92P. Where the Committee as constituted at any time has taken evidence in relation to a matter but the Committee as so constituted has ceased to exist before reporting on the matter, the Committee as constituted at any subsequent time, whether during the same or another Parliament may consider that evidence as if it had taken that evidence.

Protection of witnesses

“92Q. A person shall not—

- (a) use violence to or inflict injury on;
- (b) cause violence, damage, loss or disadvantage to; or
- (c) cause the punishment of,

another person for or on account of the other person having appeared, or being due to appear, as a witness before the Committee or for or on account of any evidence given by that other person before the Committee.

Penalty:

- (d) in the case of a natural person—\$10,000 or imprisonment for 5 years, or both; or
- (e) in the case of a body corporate—\$50,000.

Application of Parliamentary Papers Act

“92R. (1) Sub-section 92G (1) has effect notwithstanding section 2 of the *Parliamentary Papers Act 1908*.

“(2) Where evidence taken by the Committee in private is disclosed or published in accordance with section 92G, section 4 of the *Parliamentary*

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Papers Act 1908 applies to the disclosure or publication as if it were a publication of that evidence under an authority given in pursuance of section 2 of that Act.

Secrecy

“92S. (1) A person who is or has been a member, or a member of the staff, of the Committee shall not, either directly or indirectly, except for the purposes of this Part—

- (a) make a record of, or divulge or communicate to any person, any information acquired by reason of the person holding that office or employment; or
- (b) produce to any person a document furnished for the purposes of this Part.

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

“(2) A person who is, or has been a member, or a member of the staff, of the Committee shall not be required to produce in a court any document of which he or she has custody, or to which he or she has access, by virtue of the person’s office or employment under or for the purposes of this Part, or to divulge or to communicate to a court any information obtained by him or her by reason of such an office or employment.

“(3) 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, and ‘production’ has a corresponding meaning, and a reference in this section to information or a document shall be read as a reference to information or a document supplied to the Committee for the purposes of this Part.

Prosecution of offences

“92T. A prosecution for an offence against this Part shall be instituted only by or with the consent of the Attorney-General.”.

40. Section 93 of the Principal Act is repealed and the following section is substituted:

Offences

“93. (1) An offence against sub-section 18 (2), 81 (1), 92G (1), 92M (5) or 92S (1) or against section 92Q is an indictable offence.

“(2) An offence against any other provision of this Act shall be prosecuted in a court of summary jurisdiction.

“(3) Notwithstanding that an offence referred to in 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.

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“(4) Where, in accordance with sub-section (3), a court of summary jurisdiction convicts a person of an offence referred to in sub-section (1), the penalty that the court may impose is—

- (a) in the case of a natural person—a fine not exceeding \$2,000 or imprisonment for a period not exceeding one year, or both; or
- (b) in the case of a body corporate—a fine not exceeding \$10,000.

“(5) Where, in proceedings for an offence against this Act in respect of any conduct engaged in by a body corporate, it is necessary to establish the state of mind of the body corporate, it is sufficient to show that a director, servant or agent of the body corporate, being a director, servant or agent by whom the conduct was engaged in within the scope of his or her actual or apparent authority, had that state of mind.

“(6) Any conduct engaged in on behalf of a body corporate—

- (a) by a director, servant or agent of the body corporate within the scope of his or her actual or apparent authority; or
- (b) by any other person at the direction or with the consent or agreement (whether express or implied) of a director, servant or agent of the body corporate, where the giving of the direction, consent or agreement is within the scope of the actual or apparent authority of the director, servant or agent,

shall be deemed, for the purposes of this Act, to have been engaged in by the body corporate.

“(7) A reference in sub-section (5) to the state of mind of a person includes a reference to the knowledge, intention, opinion, belief or purpose of the person and the person’s reasons for his or her intention, opinion, belief or purpose.”.

Annual report

41. Section 94 of the Principal Act is amended—

- (a) by omitting from sub-section (2) “treat it as secret” and substituting “treat as secret any part of the report that is not tabled in a House of the Parliament”; and
- (b) by adding at the end the following sub-sections:

“(3) Subject to sub-section (4), the Minister shall cause a copy of a report furnished under sub-section (1) to be laid before each House of the Parliament within 20 sitting days of that House after the report is received by the Minister.

“(4) For the purposes of sub-section (3), the Minister may make such deletions from a report furnished under sub-section (1) as the Minister, after obtaining advice from the Director-General, considers necessary 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.”.

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NOTE

1. No. 113, 1979, as amended. For previous amendments, see No. 182, 1979; and No. 65, 1985.

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