1986

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

THE HOUSE OF REPRESENTATIVES

INSPECTOR-GENERAL OF INTELLIGENCE AND SECURITY BILL 1986

EXPLANATORY MEMORANDUM

(Circulated by authority of the Prime Minister, the Hon. R.J.L. Hawke, AC, MP)
The purpose of this Bill is to create an Office of Inspector-General of Intelligence and Security. The Inspector-General's principal role will be to assist Ministers to ensure that the public interest in the proper functioning of the security and intelligence agencies is met.

2. Mr Justice Hope in the final reports of the Royal Commission on Australia's Security and Intelligence Agencies (RCASIA) recommended creation of the Office. In tabling the reports in May 1985, the Government accepted the recommendation for the creation of an Office of Inspector-General, believing it to be a valuable addition to existing machinery.

3. The Bill gives a number of important functions to the Inspector-General with respect to all of the agencies. Specifically, the Inspector-General will inquire into the agencies' compliance with legality, propriety, Ministerial directions or guidelines, and human rights, and into their procedures relating to grievances of employees.

4. Whether inquiries can be investigated on the Inspector-General's own motion, in response to a request from the Minister or in response to a complaint, varies to some extent from agency to agency. This is in recognition of the different roles played by the agencies. ASIO is the domestic security intelligence organization and, consequently, most likely to affect Australian citizens or permanent residents; DSD and ASIS are collectors of external intelligence and their activities are much less likely to directly affect Australians; ONA and JIO are assessors of external intelligence and their activities rarely directly affect Australians.

5. As well as the functions outlined above, the Inspector-General has two additional functions in respect of ASIO. First, he or she will, at the request of the responsible Minister and provided it is outside the jurisdiction of the Security Appeals Tribunal, inquire into the action that should be taken to protect the rights of an Australian citizen or permanent resident in a case where 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. Secondly, where the responsible Minister has given a written direction to ASIO on the question of whether the collection or communication of intelligence concerning a particular individual is justified on security grounds, the Inspector-General has the function of inquiring into such directions.
6. The Inspector-General is also given the function of inquiring into certain employment-related grievances raised by agency employees where appropriate review mechanisms do not already exist.

Financial Impact Statement

7. The creation of an Office of Inspector-General of Intelligence and Security will have a minor impact on Government expenditure. A sum of $0.325m has been included in the 1986/87 estimates of the Department of the Prime Minister and Cabinet. This covers once-only establishment costs, and salaries and operating costs for 1986/87 based on a small staff of five.
NOTES ON CLAUSES

PART I - PRELIMINARY

Clause 1: Short Title

Clause 2: Commencement

8. Clause 2 provides that the Act shall come into operation on the day fixed under sub-section 2(1) of the Australian Security Intelligence Organization Amendment Act.

Clause 3: Interpretation

9. Definitions of significant words or phrases used in the legislation are detailed below:

"adverse or qualified security assessment" and "Commonwealth agency" have the same meaning as in Part IV of the Australian Security Intelligence Organization Act;

"agency" means Australian Security Intelligence Organization (ASIO); Australian Secret Intelligence Service (ASIS); Defence Signals Directorate (DSD) including any part of the Defence Force performing functions on its behalf, and Joint Intelligence Organization (JIO) in the Department of Defence; or Office of National Assessments (ONA);

"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;

"Inspector-General" means the Inspector-General of Intelligence and Security;

"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;

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

"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;

10. Sub-clause 3(2) provides that unless the contrary intention appears, a reference to the taking of action includes a reference to the making of a decision or recommendation and the failure or refusal to take any action or to make a decision or recommendation.

11. Sub-clause 3(3) provides that 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 the action is taken for or in connection with, or is incidental to, the performance of the functions of the agency, or whether or not the taking of the action is within the duties of the member.

Clause 4: Objects of Act

12. Clause 4 provides that the Act's objectives include to assist Ministers in the oversight and review of the compliance with the law and with propriety, and of the appropriateness and effectiveness of the internal procedures relating to legality or propriety, of the intelligence and security agencies; to assist Ministers in ensuring that agencies' activities are consistent with human rights; and to allow certain directions given by the Attorney-General to ASIO to be reviewed.

Clause 5: Application of Act

13. Clause 5 provides that the Act applies both within and outside Australia and in every external Territory.
6.

PART II - INSPECTOR-GENERAL

Division 1 - Establishment and Functions of Inspector-General

Clause 6: Inspector-General of Intelligence and Security

14. Clause 6 establishes an Office of Inspector-General. The Inspector-General is to be appointed by the Governor-General upon the recommendation of the Prime Minister, after the Prime Minister has consulted with the Leader of the Opposition. If the appointee is a judicial office-holder of a State or the Northern Territory, his or her services may be secured by the Governor-General making appropriate arrangements with the relevant State Governor or the Northern Territory Administrator. The Commonwealth may reimburse the relevant State or Northern Territory for the appointee's services. The terms and conditions of appointment, remuneration and allowances, leave of absence, resignation and termination of appointment are dealt with by clauses 26, 27, 28, 29 and 30.

Clause 7: Appointment of Judge as Inspector-General not to affect tenure, etc

15. Under Sub-clause 7(1), the appointment of, or service by, a judicial office-holder as Inspector-General shall not affect that person's rights or entitlements arising from the holding 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. Where a Judge is appointed, sub-clause 27(4) states that he or she is not entitled to remuneration under this Act while receiving a salary or annual allowance as a Judge. Sub-clause 7(2) defines the meaning of "judicial office" for the purpose of sub-clause 7(1).

Clause 8: Functions of Inspector-General

16. The functions of the Inspector-General and the means by which inquiries can be initiated vary in respect of ASIO, ASIS/DSD, and ONA/JIO. These groups of agencies perform different roles and so differ in the extent to which they are able or likely to affect Australian citizens or permanent residents.

17. ASIO, as Australia's domestic security intelligence agency, is most likely to affect Australian citizens or permanent residents. Consequently, the Inspector-General's functions are wider in respect of ASIO than the other agencies. Sub-clause 8(1)(a) provides that at
the request of the responsible Minister, of the Inspector-General's own motion or in response to a complaint, the Inspector-General shall inquire into any matter relating to ASIO's compliance with Commonwealth, State and Territory laws; its compliance with directions or guidelines given by the responsible Minister; the propriety of particular activities; the effectiveness and appropriateness of its procedures relating to the legality or propriety of its activities; or an act or practice of the Organization that is or may be inconsistent with or contrary to any human right.

18. The human rights function given to the Inspector-General in respect of ASIO in sub-clause 8(1)(a)(v) is activated by a reference from the Human Rights Commission in relation to possible breaches of human rights, including privacy, and discrimination on the grounds of race, sex, etc. Identical provisions apply in the case of the other agencies (see sub-clauses 8(2)(a)(iv) and 8(3)(b)(i)). The Intelligence and Security (Consequential Amendments) Bill provides that the Human Rights Commission should refer such complaints to the Inspector-General. This function was not specifically addressed by RCASIA, but is a logical extension of the other functions given to the Inspector-General; it prevents a probable duplication of effort between the Inspector-General and the Human Rights Commission; and it safeguards both the need-to-know principle and confidentiality by limiting the number of people investigating matters relating to intelligence and security. It is intended that this provision would be amended to apply to the Human Rights and Equal Opportunity Commission when the proposed new Human Rights legislation is proclaimed.

19. Sub-clause 8(1)(b) provides that, at the request of the responsible Minister or of the Inspector-General's own motion, it is a function of the Inspector-General to inquire into ASIO's procedures relating to the redress of grievances of its employees. Complaints by ASIO employees about employment-related matters are dealt with in sub-clauses 8(6), 8(7) and 11(5) (see paragraph 28 below).

20. Sub-clause 8(1)(c) recalls a recommendation made in the RCASIA Report on Term of Reference (c) (Combe/Ivanov) for the establishment of a statutory procedure to decide, in appropriate cases, whether, and, if so, how an Australian citizen or resident should be provided with an opportunity to be heard when a report by ASIO may result in action adverse to the interests of that citizen or resident. Under sub-clause 8(1)(c), at the request of the responsible Minister and provided such an ASIO report could not be reviewed by the
Security Appeals Tribunal, the Inspector-General is to make inquiries. The Inspector-General is particularly tasked with inquiring into whether the affected person should be informed of, and given an opportunity to make submissions in relation to, the report.

21. Sub-clause 8(1)(d) relates to directions given by the Attorney-General to ASIO on the collection or communication of intelligence concerning a particular individual. The ASIO Amendment Bill contains a number of amendments to section 8 of the ASIO Act to clarify the nature and extent of Ministerial control of ASIO. One of those amendments provides that the Minister cannot over-ride the opinion of the Director-General on the question of whether the collection or communication of intelligence concerning a particular individual is justified on security grounds otherwise than by a direction in writing which sets out the Minister's reasons. Sub-clause 8(1)(d) of the Inspector-General Bill gives the Inspector-General the function of inquiring into such directions - specifically, inquiring into whether collection is justified by reason of its relevance to security or whether communication would be for a purpose relevant to security. By sub-clause 3(1), "security" has the same meaning as in the ASIO Act (but subject to the amendments of that definition in the ASIO Amendment Bill). Where the Inspector-General concludes that such a Ministerial direction was not justified, clause 25 provides that the Inspector-General shall furnish the Prime Minister as well as the relevant Minister with a copy of his or her report formulated in accordance with clause 22.

22. The Inspector-General's functions in relation to ASIS or DSD are set out in sub-clause 8(2). It provides that the Inspector-General shall, at the request of the responsible Minister, of the Inspector-General's own motion or in response to a complaint made by an Australian citizen or permanent resident, inquire into ASIS's or DSD's compliance with Commonwealth, State or Territory laws; their compliance with directions or guidelines given by the responsible Minister; the propriety of particular activities of those agencies; or, upon reference by the Human Rights Commission, an act or practice of either agency that is or may be inconsistent with or contrary to any human right. These functions are qualified as described in paragraph 26 below.

23. As with ASIO, sub-clause 8(2)(b) provides that, at the request of the responsible Minister or the Inspector-General's own motion, the Inspector-General is to inquire into the procedures of ASIS or DSD relating to redress of grievances of employees. Individual complaints on employment-related matters by employees are dealt with in sub-clauses 8(5), 8(6), and 11(5) (see paragraphs 27-28 below).
24. At the request of the responsible Minister but not of the Inspector-General's own motion as is the case with ASIO at sub-clause 8(1)(a)(iv), sub-clause 8(2)(c) provides that the Inspector-General shall inquire into the effectiveness and appropriateness of the procedures of either ASIS or DSD which relate to legality or propriety.

25. Sub-clause 8(3) sets out the Inspector-General's functions in respect of the two assessment agencies, JIO and ONA. Because the operations of these agencies rarely directly affect Australian citizens or permanent residents, the Inspector-General is not tasked with making inquiries of his or her own motion—except in relation to human rights on a reference from the Human Rights Commission, or procedures relating to redress of grievances of employees of JIO or ONA. At the request of the responsible Minister, the Inspector-General's functions are to inquire into either agency's compliance with Commonwealth, State or Territory laws; the propriety of their particular activities, or the effectiveness and appropriateness of procedures relating to the legality or propriety of their activities.

26. Sub-clause 8(4) qualifies the Inspector-General's functions with respect to ASIS and DSD by preventing the Inspector-General, whether of his or her own motion or in response to a complaint, from undertaking inquiries except to the extent that Australian citizens or permanent residents are affected or a law of the Commonwealth, a State or Territory may be violated. This qualification does not apply to inquiries requested by Ministers under sub-clause 8(2)(a) or the Prime Minister under clause 9.

27. Sub-clause 8(5), in conjunction with the definition of the Inspector-General's jurisdiction under sub-clauses 8(1), (2) and (3), has the effect of allowing employees of the agencies to make complaints to the Inspector-General provided that they do not directly relate to the promotion, termination of appointment, discipline or remuneration of the complainant or to other matters relating to the complainant's employment. This exclusion avoids duplication of review where agency employees have access to employment-related grievance mechanisms.

28. Employees of ASIO and ASIS, unlike those in the other agencies, are not employed under the Public Service Act or the Defence Force Act and do not have the same grievance mechanisms available to them. Sub-clause 8(6) recognises this by providing that, where there is no other external review body available and therefore no risk of duplication (sub-clause 8(7)), employees of ASIO or ASIS may make a complaint to the Inspector-General on
a matter which directly relates to promotion, termination of appointment, discipline or remuneration of the complainant or to other matters relating to the complainant's employment. Sub-clause 11(5) provides that the Inspector-General would not inquire into such complaints as a matter of course (see paragraph 36 below).

29. Sub-clause 8(8) places certain prohibitions on the functions of the Inspector-General. Under sub-clause 8(8)(a), the Inspector-General shall not inquire into a matter relating to an agency that occurred outside Australia or before the commencement of the Act, other than with the approval of the responsible Minister. This reflects the emphasis given throughout the Bill to inquiring into and reporting on matters affecting Australian citizens and permanent residents, recognises that two major Royal Commissions into the intelligence and security agencies have been conducted over the last decade, and takes account of the prospective workload of the Inspector-General.

30. Under sub-clause 8(8)(b), the Inspector-General is not to inquire into action taken by Ministers, other than in respect of certain Ministerial directions referred to at sub-clauses 8(1)(a)(ii), 8(1)(d) and 8(2)(a)(ii). The Inspector-General, under sub-clause 8(8)(c), is not to enquire into a matter which could be or is being reviewed by the Security Appeals Tribunal.

31. Sub-clause 8(9) provides that the Inspector-General may perform functions conferred on him or her by another Act. For example, the ASIO Amendment Bill provides, at clause 27, for the Inspector-General to undertake inquiries for purposes of section 65 of the ASIO Act.

Clause 9: Additional functions of Inspector-General

32. In view of the Prime Minister's particular responsibilities for intelligence and security as Chairman of the Security Committee of Cabinet, clause 9 provides that the Prime Minister may request the Inspector-General to inquire into a matter relating to any of the agencies, if such an inquiry falls within the functions of the Inspector-General as described in Clause 8. Where the Inspector-General reports on such an inquiry, copies are to be provided to the responsible Minister and agency head as well as to the Prime Minister (Clause 22(1)).
Division 2 - Complaints

Clause 10: Form of complaints

33. Under clause 10, a complaint may be made to the Inspector-General either orally or in writing. If made orally, the Inspector-General shall put the complaint in writing or require the complainant to do so.

Clause 11: Inquiry into complaint

34. Clause 11 provides that where a complaint about an agency's actions is made to the Inspector-General, and an inquiry is within the functions of the Inspector-General as set out in clause 8, the Inspector-General shall inquire into the action unless he or she exercising the discretions not to do so as set out in sub-clauses (2), (3), (4) and (5). The Inspector-General may under the provisions of clause 14 (see paragraph 41 below) make preliminary inquiries of an agency head to determine whether to inquire into a complaint.

35. Sub-clause 11(2) gives the Inspector-General discretions of the kind conferred on the Ombudsman under the Ombudsman Act to decide not to inquire, or continue inquiring, into a complaint. Sub-clause 11(2) confers such a discretion if the complainant became aware of the action complained about more than 12 months previously; if the complaint is frivolous, vexatious or not made in good faith; or if an inquiry, or further inquiry, is considered unwarranted by the Inspector-General having regard to all the circumstances. Additionally, sub-clause 11(3) stipulates that the Inspector-General normally shall not pursue a complaint that is being, or has been, reviewed by a court or tribunal, unless he or she is of the opinion that there are special reasons for doing so. Similarly, sub-clause 11(4) provides grounds for the Inspector-General deciding against pursuing an inquiry where of the opinion that a complainant could reasonably exercise, or have exercised, his or her right to have the complaint reviewed by a court or tribunal.

36. The effect of sub-clause 11(5) is that the Inspector-General may not inquire into a complaint made by an employee of ASIO or ASIS, being a complaint directly relating to the promotion, termination of appointment, discipline or remuneration of the complainant, or to other matters relating to the complainant's employment, if the Inspector-General is satisfied with the adequacy and effectiveness of the grievance redress procedures of that agency; that the complainant has not pursued those procedures as far as practicable; or that the complaint is not of sufficient seriousness or sensitivity to justify an inquiry.
Clause 12: Procedure where complaint not pursued

37. Clause 12 sets out the procedures to be followed where the Inspector-General decides not to pursue a complaint. The Inspector-General must inform the complainant in writing of the decision and the reasons for that decision, and provide a copy of the notice to the responsible Minister and to the head of the agency.

Clause 13: Special arrangements for persons in custody

38. Special arrangements are envisaged at clause 13 where a complainant is in custody.

39. Sub-clause 13(1) provides that such a complainant has the right to facilities for preparing a written complaint to the Inspector-General and to have the written complaint, other information if any, and after the complaint has been made any other relevant information sent to the Inspector-General without undue delay in a sealed envelope. Such a person also has the right to receive without undue delay confidential communications related to the complaint in a sealed envelope from the Inspector-General.

40. Sub-clause 13(2) ensures the confidentiality of communications from the Inspector-General by requiring that the sealed envelope referred to in sub-clause 13(1) cannot be opened by anyone other than the addressee or a person acting on behalf of the addressee. This confidentiality is further strengthened by the provisions of sub-clause 13(3) which enable the Inspector-General to make arrangements with the appropriate State or Territory custodial authorities for the identification and delivery of sealed envelopes.

Clause 14: Preliminary inquiries

41. Clause 14 establishes that on receipt of a complaint, the Inspector-General may make preliminary inquiries of a relevant agency head to determine whether the complaint is within jurisdiction or, if so, whether to inquire into the complaint. In consequence of sub-clause 11(1), a decision not to inquire would require an exercise of the discretions set out in sub-clauses 11(2) to 11(5).

Division 3 - Inquiries

Clause 15: Inspector-General to inform Minister and agency head before commencing an inquiry

42. Clause 15 stipulates that before commencing an inquiry, the Inspector-General shall inform the responsible Minister and the head of the agency.
Clause 16: Inspector-General to consult with Auditor-General

43. Clause 16 provides that the Inspector-General shall have regard to the functions of the Auditor-General in relation to the agencies and may consult with him or her to avoid duplication of inquiries.

Clause 17: Conduct of inquiries

44. Clause 17 sets out the manner, for the most part paralleling the related Ombudsman Act provisions, in which the Inspector-General shall conduct inquiries.

45. Sub-clause 17(1) specifies that the Inspector-General shall conduct inquiries in private and in the manner which he or she thinks fit. The Inspector-General may, under the provisions of sub-clause 17(2), obtain such information and make such inquiries as he or she thinks fit. Sub-clause 17(3) provides that, subject to sub-clause 17(4), it is not necessary for a complainant or any other person to be afforded an opportunity to appear before the Inspector-General.

46. Sub-clauses 17(4) and (5) apply where the Inspector-General reports critically on an agency or person. The Inspector-General shall not make a report that is expressly or impliedly critical of an agency or of a person without first giving the agency head or the person a reasonable opportunity to appear before the Inspector-General and make either oral or written submissions. A person in such circumstances may, with the Inspector-General's approval, be represented by another person.

47. Sub-clauses 17(6) and (7) provide that the Inspector-General, before completing an inquiry and reporting formally, may discuss the inquiry with the Minister concerned or consult with the Prime Minister if it is appropriate to do so. Sub-clause 17(8) stipulates that the Inspector-General shall, before making a report that is either expressly or impliedly critical of an agency, give the responsible Minister a reasonable opportunity to discuss the proposed report with the Inspector-General.

49. Sub-clause 17(9) requires that the Inspector-General shall inform the responsible Minister if in the Inspector-General's opinion there is sufficient evidence of a breach of duty or of misconduct by the head of an agency, and shall similarly inform the head of the relevant agency if there is such evidence of wrongdoing by a member of an agency.
Clause 18: Power to obtain information and documents

49. To facilitate an inquiry, the Bill gives the Inspector-General powers, comparable to those conferred on the Ombudsman, to obtain information and documents from witnesses. Sub-clause 18(1) provides that the Inspector-General may, by notice in writing, require a person or a body corporate believed able to assist in the inquiry to produce, within a specified reasonable period, relevant information or documents.

50. Having obtained documents or records, the Inspector-General is empowered in sub-clause 18(2) to copy and retain possession of them for the time necessary for the inquiry, but is required to permit access to them by persons otherwise entitled to access.

51. Sub-clause 18(3) gives the Inspector-General the authority to give notice in writing to require a person who he or she believes may be able to assist in his or her inquiries to attend before him or her to answer relevant questions. Sub-clause 18(4) allows the Inspector-General to administer an oath or affirmation to, and then to examine, a witness assisting an inquiry, and then to examine, a witness assisting an inquiry. Under Sub-clause 18(5), the oath or affirmation is that the evidence the person will give will be true.

52. Sub-clause 18(6) provides that a person is not excused from giving information, answering a question or producing a document on the grounds that it would contravene another Act, be contrary to the public interest, tend to incriminate a person or make that person liable to a penalty, or would disclose legal advice given to a Minister, Department or authority of the Commonwealth. But the information, document or answer is not admissible in evidence against the person in any court or proceedings, except in a prosecution for an offence against this Act or that part of the Crimes Act 1914 that relates to such an offence.

53. Sub-clauses 18(7) and (8) stipulate that a person, including a body corporate, who fails to comply with a request by the Inspector-General to appear, to be sworn or to make an affirmation, to give information or documents, or who knowingly provides information that is materially false or misleading, is guilty of an offence punishable on conviction, in the case of a person, by a fine not exceeding $1000 or imprisonment for a period not exceeding 6 months, or both, or a fine not exceeding $5000 in the case of a body corporate. The intention of sub-clause 18(9) is that a person is not liable to any penalty stemming from a Commonwealth or Territory law for having given information, produced a document or answered a question where required to do so under clause 18.
Clause 19: Entry to premises occupied by an agency

54. For the purposes of an inquiry under this Bill sub-clause 19(1) empowers the Inspector-General to enter any place occupied by an agency, at any reasonable time, after notifying the agency head. Sub-clause 19(2) requires the Inspector-General to obtain Ministerial approval if the place is a prohibited place by virtue of section 7 of the Defence (Special Undertakings) Act or is declared a restricted area under section 14 of that Act.

Clause 20: Security of agency documents

55. Clause 20 ensures the security of agency documents that have a national security classification. If such documents are to be removed from the agency for the purposes of an inquiry, the Inspector-General is required to make arrangements with the agency head for their security and return.

Division 4 — Reports

Clause 21: Draft reports relating to inquiries

56. Clause 21 prescribes a consultative process to be undertaken by the Inspector-General with an agency when he or she is preparing a report on that agency. The Inspector-General shall provide the head of the agency with a draft report resulting from an inquiry and shall include in the final report those comments provided within a reasonable time by the agency head that are relevant to the final report.

Clause 22: Reports relating to inquiries

57. Where the Inspector-General completes an inquiry and has undertaken the consultation on a draft report required by clause 21, sub-clause 22(1) requires the Inspector-General to prepare a final report setting out his or her conclusions and recommendations and to give copies of the report to the relevant Minister, the head of the agency concerned and, where the inquiry was commissioned by the Prime Minister in accordance with clause 9, to the Prime Minister. Under sub-clause 22(2), the report is to include reasons for the conclusions and recommendations and may include a recommendation for compensation to a person adversely affected by agency action.

Clause 23: Advice to complainant

58. Consistent with requirements of administrative law, clause 23 provides the complainant with the right to a written response from the Inspector-General relating to the completed inquiry, but provided the Minister
responsible and the Inspector-General have agreed that the proposed response will not prejudice security, the defence of Australia or Australia's relations with other countries.

Clause 24: Action as a result of reports

59. Where an agency head takes or proposes to take any action arising from a report by the Inspector-General, sub-clause 24(1) provides that the agency head is to furnish the Inspector-General with details of any such action taken or proposed.

60. Where the Inspector-General is of the opinion that the head of an agency has not, within a reasonable period of time, taken adequate or appropriate action as a result of a report, the Inspector-General is authorised by sub-clause 24(2) to discuss the matter with the responsible Minister and to prepare a report and give it to the Prime Minister.

Clause 25: Reports concerning collection or communication of intelligence

61. Where, in accordance with sub-clause 8(1)(d) (see paragraph 21 above), the Inspector-General has inquired into a matter relating to a direction given to ASIO by the responsible Minister concerning the collection or communication of intelligence regarding a particular individual and concludes that the direction given by the Minister to ASIO was not justified, the Inspector-General shall give to the Prime Minister, as well as to the responsible Minister, a copy of the inquiry report (prepared in accordance with clause 22).
PART III - ADMINISTRATIVE PROVISIONS

Clause 26: Terms and conditions of appointment

62. Clause 26, sub-clauses (1) - (5), set out the terms and conditions of appointment to the office of Inspector-General (see also clause 6 - paragraph 14 above). The Inspector-General shall be appointed for a period not exceeding three years and may be re-appointed for one further term. If the person appointed is not a Judge, the terms and conditions of appointment, other than those provided by this Bill, will be determined by the Governor-General. The Inspector-General may be appointed on either a full or part-time basis but a person appointed on a full-time basis may not be appointed for a period extending beyond the normal retirement age of 65 years.

Clause 27: Remuneration and allowances

63. Sub-clauses 27(1) and (2) provide for the remuneration and allowances to be paid to the Inspector-General. The Inspector-General shall be paid such remuneration as is determined by the Remuneration Tribunal or, if no determination is made by the Tribunal, the remuneration may be prescribed by regulations. Sub-clause 27(3) provides that both sub-clauses 27(1) and (2) have effect subject to the Remuneration Tribunals Act. Under sub-clause 27(4), if a Judge is appointed as Inspector-General, he or she is not entitled to remuneration under this Act while receiving salary or annual allowance as a Judge.

Clause 28: Leave of absence

64. Clause 28 provides that the Prime Minister may grant the Inspector-General leave of absence from duty on such terms and conditions as the Prime Minister determines.

Clause 29: Resignation

65. The Inspector-General may resign by submitting a written resignation to the Governor-General.

Clause 30: Termination of appointment

66. Clause 30 sets out specific conditions for the termination of the Inspector-General's appointment. Under sub-clause 30(1), the Inspector-General's appointment may be terminated by the Governor-General by reason of misbehaviour or physical or mental incapacity. Under sub-clause 30(2), the Governor-General shall terminate the appointment of the Inspector-General if the Inspector-General:
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;

(being a person holding office on a full-time basis) engages, except with the approval of the Prime Minister, in paid employment outside the duties of his or her office or is absent from duty, except on leave granted in accordance with clause 28, for 14 consecutive days or for 28 days in any twelve month period; or

fails, without reasonable excuse, to comply with the disclosure of interests provisions of clause 31 (see paragraph 68 below).

67. As is customary in Commonwealth legislation, sub-clause 30(3) provides that the grounds for termination of appointment specified in sub-clauses 30(1) and (2) do not apply to a person holding office as Inspector-General who is a Judge. Sub-clause 30(4) provides that if a person appointed as Inspector-General is a Judge and ceases to be a Judge, the Governor-General may terminate that person's appointment.

Clause 31: Disclosure of interests

68. Clause 31 provides that the Inspector-General shall disclose in writing to the Prime Minister all his or her interests, pecuniary or otherwise, that he or she has or acquires and that could conflict with the proper performance of the position's functions. Failure so to disclose is a ground for termination of appointment under clause 30.

Clause 32: Staff

69. Clause 32 addresses the appointment of staff to assist the Inspector-General. The Inspector-General's staff shall be appointed and employed under the Public Service Act and the Inspector-General shall have all the relevant powers of, or exercisable by, a Secretary under that Act.
PART IV - MISCELLANEOUS

Clause 33: Protection from civil actions

70. The usual protections from civil actions arising from the proper discharge of duties by the Inspector-General are provided under clause 33. Under sub-clause 33(1), neither the Inspector-General nor a person acting on his or her behalf is liable to an action or other proceedings 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.

71. Under sub-clause 33(2), a person is not liable to an action, suit or proceeding for loss, damage or injury arising by reason only of a complaint made to, document produced for, or information or evidence given to, the Inspector-General.

Clause 34: Secrecy

72. A penalty of $5000 or two years' imprisonment, or both, is provided under sub-clauses 34(1) and (2) for persons who at any time occupy the Office of Inspector-General or are members of the staff of the Inspector-General and who, either directly or indirectly:

- 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
- make use of any such information.

But recording, disclosure, communication and use of such information where undertaken in the performance of functions or duties, or in the exercise of powers, under this Bill are not prohibited.

73. Sub-clause 34(3) allows a court of summary jurisdiction to deal with this offence if the defendant and prosecutor consent. In this case sub-clause 34(4) specifies a lesser penalty not exceeding $2,000 or imprisonment for one year, or both.

74. Sub-clause 34(5) provides certain protections to the Inspector-General and staff to assist in maintaining the confidentiality of security and intelligence information. No person who is occupying or has occupied the position of Inspector-General or is or has been a member of the Inspector-General's staff shall be required to produce in a court any document which that person has custody of, or access to, by reason of the
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person's office or employment, 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 Bill.

75. Sub-clause 34(6) defines matters included within the meanings of "court" and "produce". Sub-clause 34(7) expresses the secrecy provisions of Clause 34 to apply in respect of information or a document supplied for the purposes of this Bill.

Clause 35: Annual report

76. Sub-clauses 35(1) and (2) require that as soon as practicable after each 30 June the Inspector-General shall present the Prime Minister with a report for the year ended on that 30 June, including comments on any inquiry conducted by the Inspector-General, as set out under sub-clause 8(1)(d), on directions given by the Attorney-General to ASIO on the collection or communication of intelligence concerning a particular individual.

77. Sub-clause 35(3) stipulates that the Prime Minister shall give the Leader of the Opposition in the House of Representatives a copy of the Inspector-General's complete annual report, but that the Leader of the Opposition is duty bound to treat as secret any part of the report not tabled in a House of the Parliament.

78. Under sub-clause 35(4), the Prime Minister is required to cause a copy of the Inspector-General's annual report to be laid before each House of the Parliament as soon as practicable after its receipt. Sub-clause 35(5) authorises the Prime Minister to make deletions necessary to avoid prejudice to security, the defence of Australia, Australia's relations with other countries or the privacy of individuals.

Clause 36: Regulations

79. Clause 36 provides that the Governor-General may make regulations.