

# Australian Security Intelligence Organization Act 1979

No. 113 of 1979

## TABLE OF PROVISIONS

### PART I—PRELIMINARY

Section	
1.	Short title
2.	Commencement
3.	Repeal
4.	Interpretation
5.	Meaning of subversion when not of foreign origin

### PART II—THE ORGANIZATION AND THE DIRECTOR-GENERAL

6.	Continuance of Organization
7.	Director-General
8.	Control of Organization
9.	Term of office of Director-General
10.	Remuneration and allowances of Director-General
11.	Leave of absence
12.	Resignation
13.	Termination of appointment
14.	Acting Director-General
15.	Appointment of a Judge as Director-General
16.	Rights of public servant appointed as Director-General

### PART III—FUNCTIONS AND POWERS OF ORGANIZATION

#### *Division 1—General*

17.	Functions of Organization
18.	Communication of intelligence, &c.
19.	Co-operation with other authorities
20.	Special responsibility of Director-General in relation to functions of Organization
21.	Leader of Opposition to be kept informed on security matters

#### *Division 2—Special Powers*

22.	Interpretation
23.	References to Minister
24.	Exercise of authority under warrants
25.	Search warrants
26.	Use of listening devices
27.	Inspection of postal articles
28.	Request for warrant to specify grounds
29.	Issue of certain warrants by Director-General in emergency
30.	Discontinuance of action before expiration of warrant
31.	Certain records to be destroyed
32.	Certain action in relation to requests and warrants
33.	Obstruction
34.	Director-General to report to Minister

## TABLE OF PROVISIONS—continued

## PART IV—SECURITY ASSESSMENTS

*Division 1—Preliminary*

- 35. Interpretation
- 36. Part not to apply to certain assessments

*Division 2—Furnishing of Security Assessments*

- 37. Security assessments
- 38. Person to be notified of assessment
- 39. Effect of preliminary advice by Organization
- 40. Assessments for State purposes

*Division 3—Establishment and Organization of Security Appeals Tribunal*

- 41. Establishment of Tribunal
- 42. Qualification of members
- 43. Term of office of presidential members
- 44. Arrangement for appointment of State Judge
- 45. Non-presidential members
- 46. Remuneration and allowances
- 47. Appointment of Judge not to affect tenure, &c.
- 48. Acting President
- 49. Removal from office
- 50. Resignation
- 51. Constitution of Tribunal in a review
- 52. Arrangement of business
- 53. Member of Tribunal ceasing to be available

*Division 4—Review of Security Assessments*

- 54. Applications to Tribunal
- 55. Time for lodging applications
- 56. Notice of application
- 57. Director-General to lodge certain material with Tribunal
- 58. Procedure at hearing
- 59. Certain documents and information not to be disclosed
- 60. Findings of Tribunal
- 61. Effect of findings
- 62. Findings not to be challenged
- 63. Review of findings
- 64. Restriction on further assessments after review
- 65. Reference of certain matters to Tribunal by Minister

*Division 5—Procedure and Evidence*

- 66. Representation before Tribunal
- 67. Procedure of Tribunal
- 68. Certain matters of privilege
- 69. Incriminating answers
- 70. Power of Tribunal to take evidence
- 71. Restriction on publication of evidence and findings

*Division 6—General*

- 72. Legal assistance
- 73. Protection of members, barristers and witnesses
- 74. Failure of witness to attend
- 75. Refusal to be sworn or to answer questions
- 76. Contempt of Tribunal

## TABLE OF PROVISIONS—continued

- 77. Registries
- 78. Officers of Tribunal
- 79. Lodging of documents
- 80. Return of documents at completion of proceeding
- 81. Secrecy
- 82. Fees for witnesses
- 83. Annual report by President

## PART V—STAFF OF ORGANIZATION

- 84. Employment of officers and employees
- 85. Designation of officers, &c.
- 86. Conditions of employment
- 87. Special provisions relating to existing employees
- 88. Rights of public servants
- 89. Termination of employment of officers
- 90. Regulations relating to staff
- 91. Application of Crimes Act
- 92. Publication of identity of officer of Organization

## PART VI—MISCELLANEOUS

- 93. Saving as to Director-General
- 94. Annual report
- 95. Regulations

# Australian Security Intelligence Organization Act 1979

No. 113 of 1979

An Act relating to the Australian Security Intelligence Organization.

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

## PART I—PRELIMINARY

1. This Act may be cited as the *Australian Security Intelligence Organization Act 1979*.<sup>1</sup> Short title

2. This Act shall come into operation on a date to be fixed by Proclamation. Commence-  
ment

3. The *Australian Security Intelligence Organization Act 1956* and the *Australian Security Intelligence Organization Act 1976* are repealed. Repeal

4. In this Act, unless the contrary intention appears— Interpret-  
ation

“activities prejudicial to security” includes any activities concerning which Australia has responsibilities to a foreign country as referred to in paragraph (b) of the definition of “security” in this section;

“active measures of foreign intervention” means clandestine or deceptive action taken by or on behalf of a foreign power to promote the interests of that power;

“acts of violence” includes the kidnapping or detention of a person;

“authority of the Commonwealth” includes—

- (a) a Department of State or a Department of the Public Service;
- (b) the Defence Force;
- (c) a body, whether incorporated or not, established for public purposes by or under a law of the Commonwealth or of a Territory;
- (d) the holder of an office established for public purposes by or under a law of the Commonwealth or of a Territory;
- (e) a prescribed body established in relation to public purposes that are of concern to the Commonwealth and any State or States; and

(f) a company the whole of the share capital of which is held by the Commonwealth;

“Director-General” means the Director-General of Security holding office under this Act;

“domestic subversion” means activities of the kind to which subsection 5 (1) applies;

“Judge” means a Judge of a court created by the Parliament;

“Organization” means the Australian Security Intelligence Organization;

“security” means—

(a) the protection of, and of the people of, the Commonwealth and the several States and Territories from—

- (i) espionage;
- (ii) sabotage;
- (iii) subversion;
- (iv) active measures of foreign intervention; or
- (v) terrorism,

whether directed from, or committed within, Australia or not; and

(b) the carrying out of Australia’s responsibilities to any foreign country in relation to a matter mentioned in any of the sub-paragraphs of paragraph (a);

“terrorism” includes—

(a) acts of violence for the purpose of achieving a political objective in Australia or in a foreign country (including acts of violence for the purpose of influencing the policy or acts of a government in Australia or in a foreign country);

(b) training, planning, preparations or other activities for the purposes of violent subversion in a foreign country or for the purposes of the commission in a foreign country of other acts of violence of a kind referred to in paragraph (a);

(c) acts that are offences punishable under the *Crimes (Internationally Protected Persons) Act 1976*; or

(d) acts that are offences punishable under the *Crimes (Hijacking of Aircraft) Act 1972* or the *Crimes (Protection of Aircraft) Act 1973*.

Meaning of subversion when not of foreign origin

5. (1) For the purposes of this Act, the activities of persons, other than activities of foreign origin or activities directed against a foreign government, that are to be regarded as subversion are—

(a) activities that involve, will involve or lead to, or are intended or likely ultimately to involve or lead to, the use of force or violence or other unlawful acts (whether by those persons or by others)

for the purpose of overthrowing or destroying the constitutional government of the Commonwealth or of a State or Territory;

- (b) activities directed to obstructing, hindering or interfering with the performance by the Defence Force of its functions or the carrying out of other activities by or for the Commonwealth for the purposes of security or the defence of the Commonwealth; or
- (c) activities directed to promoting violence or hatred between different groups of persons in the Australian community so as to endanger the peace, order or good government of the Commonwealth.

(2) For the purposes of this section, “activities of foreign origin” means activities of, directed or subsidized by, or undertaken in active collaboration with, a foreign power or foreign political organization, whether carried on or to be carried on in Australia or outside Australia.

(3) Nothing in this section affects the meaning of the expression “subversion” in relation to activities of foreign origin or activities directed against a foreign government.

## PART II—THE ORGANIZATION AND THE DIRECTOR-GENERAL

6. The Australian Security Intelligence Organization, being the Organization that was continued in existence by the Acts repealed by this Act, is continued in existence. Continuance  
of  
Organization

7. (1) There shall be a Director-General of Security, who shall be appointed by the Governor-General and shall hold office, subject to this Act, on such terms and conditions as the Governor-General determines. Director-  
General

(2) Before a recommendation is made to the Governor-General for the appointment of a person as Director-General, the Prime Minister shall consult with the Leader of the Opposition in the House of Representatives.

8. (1) The Organization shall be under the control of the Director-General. Control of  
Organization

(2) In the performance of his functions under this Act, the Director-General is subject to the general directions of the Minister, but 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;
- (b) on the question whether a communication of intelligence concerning a particular individual would be for a purpose relevant to security; or

- (c) concerning the nature of the advice that should be given by the Organization to a Minister, Department or authority of the Commonwealth.

Term of  
office of  
Director-  
General

9. (1) Subject to this section and to sections 12 and 13, the Director-General holds office for such period, not exceeding 7 years, as is specified in his instrument of appointment, but is eligible for re-appointment.

(2) A person who has attained the age of 65 years shall not be appointed or re-appointed as Director-General and a person shall not be appointed or re-appointed as Director-General for a period that extends beyond the date on which he will attain the age of 65 years.

Remuner-  
ation and  
allowances  
of Director-  
General

10. (1) The Director-General shall be paid such remuneration as is determined by the Remuneration Tribunal but, if no determination of that remuneration by the Tribunal is in operation, he shall be paid such remuneration as is prescribed.

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

(3) This section has effect subject to the *Remuneration Tribunals Act 1973* and to section 15.

Leave of  
absence

11. The Minister may grant leave of absence to the Director-General upon such terms and conditions as to remuneration or otherwise as the Minister determines.

Resignation

12. The Director-General may resign his office by writing signed by him and delivered to the Governor-General.

Termination  
of  
appointment

13. (1) The Governor-General may terminate the appointment of the Director-General by reason of physical or mental incapacity, misbehaviour or failure to comply with a provision of this Act.

(2) If the Director-General—

(a) absents himself from duty, except with the leave of the Minister, for 14 consecutive days or for 28 days in any 12 months; or

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

the Governor-General shall terminate his appointment.

Acting  
Director-  
General

14. (1) The Governor-General may appoint a person to act as Director-General—

(a) during a vacancy in the office of Director-General; or

- (b) during any period, or during all periods, when the Director-General is absent from duty or from Australia or is, for any reason, unable to perform the functions of his office,

but a person appointed to act during a vacancy shall not continue so to act for more than 12 months.

(2) Before a recommendation is made to the Governor-General for the appointment of a person, under sub-section (1), to act as Director-General, the Prime Minister shall consult with the Leader of the Opposition in the House of Representatives, unless it is impracticable to do so.

(3) An appointment of a person under sub-section (1) may be expressed to have effect only in such circumstances as are specified in the instrument of appointment.

(4) The Governor-General may—

- (a) determine the terms and conditions of appointment, including remuneration and allowances, of a person acting as Director-General; and  
(b) at any time terminate such an appointment.

(5) Where a person is acting as Director-General in accordance with paragraph (1) (b) and the office of Director-General becomes vacant while that person is so acting, that person may continue so to act until the Governor-General otherwise directs, the vacancy is filled or a period of 12 months from the date on which the vacancy occurred expires, whichever first happens.

(6) The appointment of a person to act as Director-General ceases to have effect if he resigns his appointment by writing signed by him and delivered to the Governor-General.

(7) While a person is acting as Director-General, he has, and may exercise, all the powers and shall perform all the functions of the Director-General.

15. (1) The appointment of a Judge as Director-General, or service of a Judge as Director-General, does not affect the tenure of his office as a Judge or his rank, title, status, precedence, salary, annual or other allowances or other rights or privileges as the holder of his office as a Judge and, for all purposes, his service as Director-General shall be taken to be service as the holder of his office as a Judge.

Appointment  
of a Judge as  
Director-  
General

(2) Subject to sub-section (3), if the Director-General is a Judge, he shall be paid salary at such rate (if any), and an annual allowance at such rate (if any), as are fixed from time to time by the Parliament.

(3) If the Director-General is a Judge, he is not, while he receives salary or annual allowance as a Judge, entitled to salary or annual allowance, as the case may be, under this Act, except to the extent (if any) that the salary or annual allowance that would be payable to him under this



Act apart from this sub-section exceeds the salary or annual allowance payable to him as a Judge.

Rights of  
public  
servant  
appointed as  
Director-  
General

16. (1) If a person appointed as Director-General was, immediately before his appointment, an officer of the Australian Public Service or a person to whom the *Officers' Rights Declaration Act 1928* applied—

- (a) he retains his existing and accruing rights;
- (b) for the purpose of determining those rights, his service as Director-General shall be taken into account as if it were service in the Australian Public Service; and
- (c) the *Officers' Rights Declaration Act 1928* applies as if this Act and this section had been specified in the Schedule to that Act.

(2) References in sub-section (1) to appointment or service as Director-General shall be read as including references to appointment or service as Director-General of Security under the *Australian Security Intelligence Organization Act 1956*.

### PART III—FUNCTIONS AND POWERS OF ORGANIZATION

#### *Division 1—General*

Functions of  
Organization

17. (1) The functions of the Organization are—

- (a) to obtain, correlate and evaluate intelligence relevant to security;
- (b) for purposes relevant to security and not otherwise, to communicate any such intelligence to such persons, and in such manner, as are appropriate to those purposes; and
- (c) to advise Ministers and authorities of the Commonwealth in respect of matters relating to security, in so far as those matters are relevant to their functions and responsibilities.

(2) It is not a function of the Organization to carry out or enforce measures for security within an authority of the Commonwealth.

Com-  
munication  
of  
intelligence,  
&c.

18. (1) The communication of intelligence on behalf of the Organization shall be made only by the Director-General or by an officer of the Organization acting within the limits of authority conferred on him by the Director-General.

(2) If a person makes a communication of any information or matter that has come to his knowledge or into his possession by reason of his being, or having been, an officer or employee of the Organization or his having entered into any contract, agreement or arrangement with the Organization, being information or matter that was acquired or prepared by or on behalf of the Organization in connection with its functions or relates to the performance by the Organization of its functions, other than a communication made—

- (a) to the Director-General or an officer or employee of the Organization—
  - (i) by an officer or employee of the Organization—in the course of his duties; or
  - (ii) by a person who has entered into any such contract, agreement or arrangement—in accordance with the contract, agreement or arrangement;
- (b) by an officer of the Organization, within the limits of authority conferred on him by the Director-General; or
- (c) with the approval of the Director-General or of an officer of the Organization having the authority of the Director-General to give such an approval,

he is guilty of an offence.

(3) Notwithstanding paragraph 17 (1) (b), the Director-General may, in accordance with the following paragraphs, by himself or by an officer authorized by him, communicate information that has come into the possession of the Organization in the course of performing its functions under section 17:

- (a) where the information relates, or appears to relate, to the commission, or intended commission, of an offence against the law of the Commonwealth or of a State or Territory, being an offence punishable by imprisonment for life or for a period, or maximum period, of not less than 3 years—the information may be communicated to an officer of the Police Force of a State or Territory or of the Commonwealth Police Force;
- (b) where the information relates, or appears to relate, to the commission, or intended commission, of an offence punishable as provided by section 235 of the *Customs Act 1901*—the information may be communicated to a person who is an officer of Customs for the purposes of the *Customs Act 1901*; or
- (c) where the information has come into the possession of the Organization outside Australia or concerns matters outside Australia and the Director-General is satisfied that the national interest requires the communication—the information may be communicated to a Minister or Department or to the Office of National Assessments.

(4) An offence against sub-section (2) may be prosecuted either summarily or on indictment and the penalty for such an offence is—

- (a) upon summary conviction—a fine not exceeding \$1,000 or imprisonment for a term not exceeding 1 year; or
- (b) upon conviction on indictment—imprisonment for a term not exceeding 2 years.

(5) A prosecution for an offence against sub-section (2) shall be instituted only by or with the consent of the Attorney-General.

Co-operation  
with other  
authorities

19. So far as necessary for, or conducive to, the performance of its functions, the Organization may, subject to any arrangements made or directions given by the Minister, co-operate with—

- (a) authorities of the Commonwealth;
- (b) Departments, Police Forces and authorities of the States; and
- (c) authorities of other countries approved by the Minister as being capable of assisting the Organization in the performance of its functions.

Special  
responsi-  
bility of  
Director-  
General in  
relation to  
functions of  
Organization

20. The Director-General shall take all reasonable steps to ensure that—

- (a) the work of the Organization is limited to what is necessary for the purposes of the discharge of its functions; and
- (b) the Organization is kept free from any influences or considerations not relevant to its functions and nothing is done that might lend colour to any suggestion that it is concerned to further or protect the interests of any particular section of the community, or with any matters other than the discharge of its functions.

Leader of  
Opposition  
to be kept  
informed on  
security  
matters

21. The Director-General shall consult regularly with the Leader of the Opposition in the House of Representatives for the purpose of keeping him informed on matters relating to security.

#### *Division 2—Special Powers*

Interpret-  
ation

22. In this Division, unless the contrary intention appears—

“examination” includes any act or process for the purpose of producing sounds, images or information from a record, and “examine” has a corresponding meaning;

“listening device” means any instrument, device or equipment capable of being used, whether alone or in conjunction with any other instrument, device or equipment, to record or listen to spoken words;

“premises” includes any land, place, vehicle, vessel or aircraft;

“record”, when used as a noun, means—

- (a) a document (including any written or printed material);  
or
- (b) an object (including a sound recording, magnetic tape or disc, microform, photograph or film) by which words, images or sounds are recorded or stored or from which information can be obtained.

**23.** A reference in this Division to the Minister shall, at a time when the Minister is absent from Australia or when, by reason of illness of the Minister or for any other reason, the Director-General cannot readily communicate with the Minister, be read as including a reference to another Minister who has been authorized in writing by the Minister to perform the functions of the Minister under this Division at such a time.

References  
to Minister

**24.** The authority of the Organization under a warrant issued under this Division shall be exercised on behalf of the Organization only by the Director-General and persons approved by him for the purposes of the warrant.

Exercise of  
authority  
under  
warrants

**25.** (1) Where, upon receipt by the Minister of a request by the Director-General for the issue of a warrant under this section, the Minister is satisfied that there are reasonable grounds for believing that there are in any premises any records without access to which by the Organization the collection of intelligence by the Organization in accordance with this Act in respect of a matter that is important in relation to security would be seriously impaired, the Minister may, by warrant under his hand, authorize the Organization to do such of the following acts and things as the Minister considers appropriate in the circumstances but subject to any restrictions or conditions that are specified in the warrant, namely—

Search  
warrants

- (a) to enter the premises;
- (b) to search the premises for the purpose of finding records relevant to that matter and, for that purpose, to open any safe, box, drawer, parcel, envelope or other container in which there is reasonable cause to believe that any such records may be found;
- (c) to inspect or otherwise examine any records 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) to remove any record so found for the purposes of its inspection or other examination, and the making of copies or transcripts, in accordance with the warrant and to retain a record so removed for such time as is reasonable for those purposes.

(2) The Minister shall not issue a warrant under this section on a ground that relates to domestic subversion unless he is satisfied that a person or organization occupying or using, or that has recently occupied or used, the premises specified in the warrant is engaged in activities constituting, or in preparation for, domestic subversion.

(3) A warrant under this section shall state whether entry under the warrant may 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, or that containers may be opened, without permission first

sought or demand made and authorize measures that he is satisfied are necessary for that purpose.

(4) A warrant under this section shall specify the period for which it is to remain in force, being a period not exceeding 7 days, but may be revoked by the Minister at any time before the expiration of the period so specified.

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

Use of  
listening  
devices

**26.** (1) It is unlawful for an officer, employee or agent of the Organization, for the purposes of the Organization, to use a listening device for the purpose of listening to or recording words while they are being spoken by another person unless—

- (a) he is a person, or is included in a class or group of persons, by whom the speaker of the words intends, or should reasonably expect, the words to be heard;
- (b) in the case of the recording of words otherwise than by a person to whom paragraph (a) applies, he does so with the consent of the speaker of the words; or
- (c) he does so in accordance with a warrant issued under this Division,

and it is the duty of the Director-General to take all reasonable steps to ensure that this sub-section is not contravened.

(2) Notwithstanding any law of a State or Territory, an officer, employee or agent of the Organization, acting on behalf of the Organization, does not act unlawfully by reason only of using a listening device as referred to in sub-section (1) in circumstances in which paragraph (a), (b) or (c) of that sub-section is applicable.

(3) Where, upon receipt by the Minister of a request by the Director-General for the issue of a warrant under this section authorizing the use of a listening device in relation to a particular person, the Minister is satisfied that—

- (a) that person is engaged in, or is reasonably suspected by the Director-General of being engaged in, or of being likely to engage in, activities prejudicial to security; and
- (b) the use by the Organization of a listening device to listen to or record words spoken by or to that person will, or is likely to, assist the Organization in carrying out its function of obtaining intelligence relevant to security,

the Minister may, by warrant under his hand, authorize the Organization, subject to any conditions or restrictions that are specified in the warrant, to use a listening device for the purpose of listening to or recording words spoken by or to that person and such a warrant may authorize the Organization to enter any premises in which that person is, or is likely to

be, for the purpose of installing, maintaining, using or recovering a listening device.

(4) Where, upon receipt by the Minister of a request by the Director-General for the issue of a warrant under this section authorizing the use of a listening device in relation to particular premises, the Minister is satisfied that—

- (a) those premises are used, likely to be used or frequented by a person engaged in, or reasonably suspected by the Director-General of being engaged in or of being likely to engage in, activities prejudicial to security; and
- (b) the use on behalf of the Organization of a listening device to listen to or record words spoken by or to persons in those premises will, or is likely to, assist the Organization in carrying out its function of obtaining intelligence relevant to security,

the Minister may, by warrant under his hand, authorize the Organization, subject to any conditions or restrictions that are specified in the warrant, to use a listening device for the purpose of listening to or recording words spoken by or to any person while the person is in those premises and such a warrant may authorize the Organization to enter those premises for the purpose of installing, maintaining, using or recovering a listening device.

(5) Where a warrant under this section authorizes entry on premises, the warrant shall state whether entry is authorized 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 authorize measures that he is satisfied are necessary for that purpose.

(6) A warrant under this section shall specify the period for which it is to remain in force, being a period not exceeding 6 months, but may be revoked by the Minister at any time before the expiration of the period so specified.

(7) Sub-section (6) shall not be construed as preventing the issue of any further warrant.

(8) 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 1978*, constitute the interception of a communication passing over a telecommunications system controlled by the Australian Telecommunications Commission.

27. (1) It is unlawful—

- (a) for a person, being an officer, employee or agent of the Organization acting in his capacity as such, to seek from the Australian Postal Commission or from an officer, employee or agent of that Commission; or

Inspection of  
postal  
articles

- (b) for that Commission or an officer, employee or agent of that Commission to provide to such a person,

access to a postal article that is in the course of the post or information concerning the contents or cover of any postal article except in pursuance of, or for the purposes of, a warrant under this section, and it is the duty of the Director-General to take all reasonable steps to ensure that this sub-section is not contravened.

(2) Where, upon receipt by the Minister of a request by the Director-General for the issue of a warrant under this section in relation to a person, the Minister is satisfied that—

- (a) that person is engaged in or is reasonably suspected by the Director-General of being engaged in, or of being likely to engage in, activities prejudicial to security; and
- (b) access by the Organization to postal articles posted by or on behalf of, addressed to or intended to be received by, that person, while the articles are in the course of the post, will, or is likely to, assist the Organization in carrying out its function of obtaining intelligence relevant to security,

the Minister may, by warrant under his hand, authorize the Organization to do such of the following acts and things as the Minister considers appropriate in the circumstances, namely, with respect to postal articles in the course of the post that were posted by or on behalf of, or are addressed to, that person or are reasonably suspected by a person authorized to exercise the authority of the Organization under the warrant to be intended to be received by that person, to inspect, and make copies of, or of the covers of, the articles, and to open the articles and inspect and make copies of the contents of any such article.

(3) Where, upon receipt by the Minister of a request by the Director-General for the issue of a warrant under this section in relation to an address, the Minister is satisfied that—

- (a) some or all of the postal articles that are being, or are likely to be, sent by post to that address are or will be intended to be received by a person (whether of known identity or not) engaged in, or reasonably suspected by the Director-General of being engaged in, or of being likely to engage in, activities prejudicial to security; and
- (b) access by the Organization to postal articles posted to that address and intended to be received by the person referred to in paragraph (a) will, or is likely to, assist the Organization in carrying out its function of obtaining intelligence relevant to security,

the Minister may, by warrant under his hand, authorize the Organization to do such of the following acts and things as the Minister considers appropriate in the circumstances, namely, with respect to postal articles in the course of the post that are addressed to that address and appear on

their face to be, or are reasonably suspected by a person authorized to exercise the authority of the Organization under the warrant to be, intended to be received by the person referred to in paragraph (a), to inspect, and make copies of, or of the covers of, the articles and to open the articles and inspect and make copies of the contents of any such article.

(4) A warrant under this section shall specify the period for which it is to remain in force, being a period not exceeding 90 days, but may be revoked by the Minister at any time before the expiration of the period so specified.

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

(6) Where the Minister issues or revokes a warrant under this section, he 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 him 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 in pursuance of a warrant under this section all reasonable assistance.

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

(9) Nothing in sub-section (1) applies in relation to a postal article addressed to, or appearing to be intended to be received by or on behalf of, the Organization.

(10) In this section—

“address” means any premises or place (including a post office box or bag service) to which postal articles may be addressed;

“agent”, in relation to the Australian Postal Commission, includes any person performing services for that Commission otherwise than under a contract of service and an employee of such a person.

**28.** A request by the Director-General for the issue of a warrant under this Division shall specify the facts and other grounds on which the Director-General considers it necessary that the warrant should be issued and (where appropriate) the grounds on which the Director-General suspects a person of being engaged in, or of being likely to engage in, activities prejudicial to security.

Request for  
warrant to  
specify  
grounds



Issue of certain warrants by Director-General in emergency

**29. (1) Where—**

- (a) the Director-General has forwarded or made a request to the Minister for the issue of a warrant under section 26;
- (b) the Minister has not, to the knowledge of the Director-General, issued, or refused to issue, a warrant as a result of the request and has not, within the preceding period of 3 months, refused to issue a substantially similar warrant;
- (c) the Director-General has not, within the preceding period of 3 months, issued a substantially similar warrant; and
- (d) the Director-General is satisfied—
  - (i) that the facts of the case would justify the issue of a warrant by the Minister; and
  - (ii) that, if the action to be authorized by the warrant does not commence before a warrant can be issued and made available by the Minister, security will be, or is likely to be, seriously prejudiced,

the Director-General may issue a warrant under his hand of the kind that could be issued by the Minister in pursuance of the request.

(2) A warrant under this section shall specify the period for which it is to remain in force, being a period that does not exceed 48 hours, but may be revoked by the Minister at any time before the expiration of the period so specified.

(3) Where the Director-General issues a warrant under this section, he shall forthwith furnish to the Minister—

- (a) a copy of the warrant; and
- (b) a statement of the grounds on which he is satisfied as to the matter referred to in sub-paragraph (1) (d) (ii).

Discontinuance of action before expiration of warrant

**30.** Where, before a warrant under this Division ceases to be in force, the Director-General is satisfied that the grounds on which the warrant was issued have ceased to exist, he shall forthwith inform the Minister accordingly and take such steps as are necessary to ensure that action in pursuance of the warrant (other than the recovery of a listening device) is discontinued.

Certain records to be destroyed

**31.** Where, by virtue of a warrant under this Division, any record or copy has been made and the Director-General is satisfied that that 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.

Certain action in relation to requests and warrants

**32. (1)** Where the Director-General makes a request, otherwise than in writing, for the issue of a warrant under this Division, he shall forthwith forward to the Minister a request in writing for the issue of a warrant.

(2) Where the Minister issues or revokes a warrant under this Division, he shall—

- (a) cause the Director-General to be informed forthwith of the issue of the warrant or of the revocation, as the case may be; and
- (b) cause the warrant or the instrument of revocation, as the case may be, to be forwarded as soon as practicable to the Director-General.

(3) The Minister shall record on each request in writing for the issue of a warrant under this Division received by him from the Director-General his decision with respect to the request and shall cause the request to be returned to the Director-General.

(4) The Director-General shall cause to be retained in the records of the Organization all warrants issued by him under this Division and all warrants and instruments of revocation received by him from, and all requests and other documents returned to him by, the Minister under this Division.

**33.** A person shall not, without reasonable excuse, obstruct or hinder a person acting in pursuance of a warrant under this Division. Obstruction

Penalty: \$1,000.

**34.** The Director-General shall furnish to the Minister in respect of each warrant issued under this Division a report in writing on the extent to which the action taken under the warrant has assisted the Organization in carrying out its function of obtaining intelligence relevant to security. Director-General to report to Minister

## PART IV—SECURITY ASSESSMENTS

### *Division 1—Preliminary*

**35.** In this Part, unless the contrary intention appears—

“adverse or qualified security assessment” means a security assessment in respect of a person that 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; Interpretation

“applicant” means a person who has applied to the Tribunal for a review of a security assessment;

“authority of a State” includes a State Minister, Department or Police Force;

“Commonwealth contractor” means a person performing work or rendering services, otherwise than as an employee, for the purposes of the Commonwealth or an authority of the Commonwealth, including a person performing such work or rendering such services as a sub-contractor or as an adviser or consultant;

“Commonwealth agency” means a Minister or an authority of the Commonwealth;

“Deputy President” means a Deputy President of the Tribunal;

“member” means a member of the Tribunal;

“non-presidential member” means a member other than a presidential member;

“prescribed administrative action” means—

- (a) action that relates to or affects access by a person to any information or place access to which is controlled or limited on security grounds, including action affecting the occupancy of any office or position under the Commonwealth or an authority of the Commonwealth or under a State or an authority of a State, or in the service of a Commonwealth contractor, the occupant of which has or may have any such access;
- (b) the exercise of any power, or the performance of any function, in relation to a person under the *Migration Act* 1958 or the regulations under that Act; or
- (c) the exercise of any power, or the performance of any function, in relation to a person under the *Australian Citizenship Act* 1948, the *Passports Act* 1938 or the regulations under either of those Acts;

“President” means the President of the Tribunal;

“presidential member” means the President or a Deputy President;

“security assessment” or “assessment” means a statement in writing furnished by the Organization to a Commonwealth agency expressing any recommendation, opinion or advice on, or otherwise referring to, the question whether it would be consistent with the requirements of security for prescribed administrative action to be taken in respect of a person or the question whether the requirements of security make it necessary or desirable for prescribed administrative action to be taken in respect of a person, and includes any qualification or comment expressed in connection with any such recommendation, opinion or advice;

“Tribunal” means the Security Appeals Tribunal established by this Part.

Part not to  
apply to  
certain  
assessments

**36.** (1) This Part (other than sub-sections 37 (1), (3) and (4)) does not apply to or in relation to—

- (a) a security assessment in relation to the employment, by engagement outside Australia for duties outside Australia, of a person who is not an Australian citizen or is not normally resident in Australia; or
- (b) a security assessment in relation to action of a kind referred to in paragraph (b) of the definition of “prescribed administrative action” in section 35 in respect of a person who is not—

- (i) an Australian citizen;
- (ii) the holder of a permanent entry permit under the *Migration Act 1958*; or
- (iii) a person to whom an instrument of exemption under paragraph 8 (1) (e) of the *Migration Act 1958* applies, not being a person whose exemption by virtue of the instrument is limited by reference to a time or purpose specified in the instrument.

(2) In this section “permanent entry permit” means an entry permit that is not a temporary entry permit.

### *Division 2—Furnishing of Security Assessments*

37. (1) The functions of the Organization referred to in paragraph 17 (1) (c) include the furnishing to Commonwealth agencies of security assessments relevant to their functions and responsibilities. Security assessments

(2) An adverse or qualified security assessment shall be accompanied by a statement of the grounds for the assessment, and that statement—

- (a) shall contain all information that has been relied on by the Organization in making the assessment, other than information the inclusion of which would, in the opinion of the Director-General, be contrary to the requirements of security; and
- (b) shall, for the purposes of this Part, be deemed to be part of the assessment.

(3) The regulations may prescribe matters that are to be taken into account, the manner in which those matters are to be taken into account, and matters that are not to be taken into account, in the making of assessments, or of assessments of a particular class, and any such regulations are binding on the Organization and on the Tribunal.

(4) Subject to any regulations made in accordance with sub-section (3), the Director-General shall, in consultation with the Minister, determine matters of a kind referred to in sub-section (3), but nothing in this sub-section affects the powers of the Tribunal.

(5) No proceedings, other than an application under Division 4, shall be brought in any court or tribunal in respect of the making of an assessment or anything done in respect of an assessment in accordance with this Act.

38. (1) Subject to this section, where, after the commencement of this Act, an adverse or qualified security assessment in respect of a person is furnished by the Organization to a Commonwealth agency, the Commonwealth agency shall, within 14 days after the day on which the assessment is so furnished, give to that person a notice in writing, to which a copy of the assessment is attached, informing him of the making Person to be notified of assessment

of the assessment and containing information, in the prescribed form, concerning his right to apply to the Tribunal under this Part.

(2) The Attorney-General may, by writing under his hand delivered to the Director-General, certify that he is satisfied that—

- (a) the withholding of notice to a person of the making of a security assessment in respect of the person is essential to the security of the nation; or
- (b) the disclosure to a person of the statement of grounds contained in a security assessment in respect of the person, or of a particular part of that statement, would be prejudicial to the interests of security.

(3) Where the Attorney-General issues a certificate under sub-section (2), he shall cause a copy of the certificate to be delivered to the Commonwealth agency to which the assessment was furnished.

(4) Sub-section (1) does not require a notice to be given in relation to a security assessment to which a certificate in accordance with paragraph (2) (a) applies.

(5) In the case of a security assessment in relation to which a certificate certifying in accordance with paragraph (2) (b) has been given, the copy of the assessment to be attached to a notice under sub-section (1) shall not contain any matter to which the certificate applies.

(6) A notice under sub-section (1) may be given to a person by delivering it to him personally or by sending it to him by registered post at his address last known to the Commonwealth agency.

Effect of  
preliminary  
advice by  
Organization

**39.** (1) Subject to sub-section (2), a Commonwealth agency shall not take, refuse to take or refrain from taking prescribed administrative action on the basis of any communication in relation to a person made by the Organization not amounting to a security assessment or on the basis of an adverse or qualified security assessment made by the Organization before the commencement of this Act.

(2) Sub-section (1) does not prevent a Commonwealth agency from taking action of a temporary nature to prevent access by a person to any information or place access to which is controlled or limited on security grounds where, on the basis of a preliminary communication by the Organization, the Commonwealth agency is satisfied that the requirements of security make it necessary to take that action as a matter of urgency pending the furnishing of an assessment by the Organization.

Assessments  
for State  
purposes

**40.** (1) Where any prescribed administrative action in respect of a person by a State or an authority of a State would affect security in connection with matters within the functions and responsibilities of a Commonwealth agency, it is within the functions of the Organization to furnish a security assessment in respect of that person to the Commonwealth agency, for the purpose of its transmission to the State

or the authority of a State for use in considering that prescribed administrative action.

(2) The Organization shall not—

- (a) communicate directly to a State or an authority of a State, whether in the form of an assessment or otherwise, any information, recommendation, opinion or advice concerning a person which the Organization knows is intended or likely to be used by the State or an authority of the State in considering prescribed administrative action in relation to that person; or
- (b) furnish to a Commonwealth agency otherwise than in the form of an assessment any information, recommendation, opinion or advice concerning a person if the Organization knows that the Commonwealth agency intends to communicate it to a State or an authority of a State for use in considering prescribed administrative action in relation to that person.

*Division 3—Establishment and Organization of Security Appeals Tribunal*

**41.** (1) There is hereby established a Security Appeals Tribunal, which shall consist of a President and such number of Deputy Presidents and other members as are appointed in accordance with this Part. Establishment of Tribunal

(2) The members shall be appointed by the Governor-General.

**42.** (1) A person shall not be appointed as a presidential member unless he is or has been a Judge of a court created by the Parliament or of a court of a State. Qualification of members

(2) A person who is, or has been, the Director-General or an officer, employee or agent of the Organization shall not be appointed as a member of the Tribunal.

**43.** (1) Subject to this Division, a presidential member holds office for such period, not being more than 7 years, as is specified in the instrument of his appointment, but is eligible for re-appointment. Term of office of presidential members

(2) Where a presidential member who is a Judge referred to in section 42 ceases to be such a Judge, he ceases to hold office as a presidential member, but is eligible for re-appointment.

(3) A person, other than a Judge referred to in section 42, appointed as a presidential member shall be appointed either as full-time member or as a part-time member.

**44.** (1) The Governor-General may, for the purpose of appointing as a presidential member a person who is a Judge of a court of a State, enter into such arrangement with the Governor of that State as is necessary to secure that person's services. Arrangement for appointment of State Judge

(2) An arrangement under sub-section (1) may provide for the Commonwealth to reimburse the State with respect to the services of the person to whom the arrangement relates.

Non-presidential members

**45.** (1) A non-presidential member shall be appointed as a part-time member.

(2) A person appointed as a non-presidential member shall be appointed either—

- (a) as a non-presidential member in the general category; or
- (b) as a non-presidential member in the special categories.

(3) A person appointed as a non-presidential member shall be a person whose standing and reputation in the community are such as to ensure public confidence in his integrity and fairness.

(4) A person appointed as a non-presidential member in the general category shall not be a person who is engaged in service in, or has had substantial service in, the Australian Public Service or the Defence Force, other than compulsory service, or service in time of war, in the Defence Force.

(5) A person appointed as a non-presidential member in the special categories shall be—

- (a) a former member of the Australian Public Service or of the Defence Force;
- (b) a member of the community with knowledge of, or experience in relation to, the needs and concerns of persons who are or have been immigrants; or
- (c) a person with experience in relation to employment under Commonwealth contractors, being employment of a kind to which security assessments may be relevant.

(6) A non-presidential member holds office for such period, not exceeding 7 years, as is specified in the instrument of his appointment, but is eligible for re-appointment.

(7) Subject to this Division, a non-presidential member holds office on such terms and conditions as are prescribed.

Remuneration and allowances

**46.** (1) A member shall be paid such remuneration as is determined by the Remuneration Tribunal, but, if no determination of that remuneration by the Remuneration Tribunal is in operation, he shall be paid such remuneration as is prescribed.

(2) A non-presidential member shall be paid such allowances as are prescribed.

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

(4) If a person who is a Judge referred to in section 42 is appointed as a member, he is not, while he receives salary or annual allowances as a Judge, entitled to remuneration under this Act.

47. The appointment as a member of a person who is a Judge of a court created by the Parliament, or service by such a person as a member, does not affect his tenure of office as a Judge or his rank, title, status, precedence, salary, annual or other allowances or other rights or privileges as a Judge and, for all purposes, his service as a member shall be taken to be service as a Judge. Appoint-  
ment of  
Judge not to  
affect tenure,  
&c.

48. (1) The Minister may appoint a Deputy President to act as President during any period, or during all periods, when the President is absent from duty or from Australia or during a vacancy in the office of President. Acting  
President

(2) A person acting in pursuance of an appointment under sub-section (1) has all the powers, and shall perform all the functions and duties, of the President.

(3) A person appointed under sub-section (1) may resign that appointment by writing under his hand delivered to the Minister.

49. (1) The Governor-General may remove a member from office on an address praying for his removal on the ground of proved misbehaviour or incapacity being presented to the Governor-General by each House of the Parliament in the same session of the Parliament. Removal  
from office

(2) The Governor-General may suspend a member from office on the ground of misbehaviour or incapacity.

(3) Where the Governor-General suspends a member from office, the Minister shall cause a statement of the ground of the suspension to be laid before each House of the Parliament within 7 sitting days of that House after the suspension.

(4) Where such a statement has been laid before a House of the Parliament, that House may, within 15 sitting days of that House after the day on which the statement has been laid before it, by resolution, declare that the member should be removed from office and, if each House so passes such a resolution, the Governor-General shall remove the member from office.

(5) If, at the expiration of 15 sitting days of a House of the Parliament after the day on which the statement has been laid before that House, that House has not passed such a resolution, the suspension terminates.

(6) The suspension of a member from office under this section does not affect any entitlement of the member to be paid remuneration and allowances.



(7) If a member becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his creditors or makes an assignment of his remuneration for their benefit, the Governor-General shall remove him from office.

(8) A member shall not be removed or suspended from office except as provided by this section.

(9) This section does not apply in relation to a member who is a Judge referred to in section 42.

**Resignation**      **50.** A member may resign his office by writing signed by him and delivered to the Governor-General.

**Constitution of Tribunal in a review**      **51.** (1) For the purposes of a particular proceeding, the Tribunal shall be constituted by—

- (a) a presidential member (who shall preside);
- (b) a non-presidential member in the general category; and
- (c) a non-presidential member in the special categories, selected having regard to the nature of the prescribed administrative action in relation to which the assessment was given.

(2) A question of law arising in a proceeding before the Tribunal (including the question whether a particular question is one of law) shall be decided in accordance with the opinion of the presidential member presiding.

(3) Subject to sub-section (2), if the members constituting the Tribunal for the purposes of a particular proceeding are divided in opinion on any question, the question shall be decided according to the opinion of the majority.

**Arrange-ment of business**      **52.** (1) The President may give directions as to the times and places (being places in Australia) for sittings of the Tribunal, as to the arrangement of the business of the Tribunal and, subject to section 51, as to the persons who are to constitute the Tribunal for the purposes of particular proceedings.

(2) The President may, either generally or otherwise as provided by the instrument of delegation, by writing signed by him, delegate all or any of his powers under sub-section (1) to a Deputy President.

(3) A delegation under sub-section (2) is revocable at will and does not prevent the exercise of a power by the President.

**Member of Tribunal ceasing to be available**      **53.** (1) Where, before a proceeding before the Tribunal has been completed, one of the members constituting the Tribunal for the purposes of the proceeding has ceased to be available for the purposes of the proceeding, the proceeding shall be re-heard by the Tribunal as reconstituted in accordance with section 51.

(2) On a re-hearing in accordance with sub-section (1), the Tribunal may have regard to any record of the proceeding before the Tribunal as previously constituted, including a record of any evidence taken in the proceeding.

*Division 4—Review of Security Assessments*

**54.** A person who has, in accordance with this Part, been given notice of an adverse or qualified security assessment in respect of him may apply in writing to the Tribunal for a review of the assessment and shall lodge with his application a copy of the assessment as furnished to him. Applications to Tribunal

**55.** Where an adverse or qualified security assessment has been notified to a person in accordance with this Part, any application under section 54 in relation to the assessment shall be made within the period of 30 days after receipt of the notification or within such further time as the Tribunal, either before or after the expiration of that period, allows. Time for lodging applications

**56.** Where an application is duly made to the Tribunal for a review of a security assessment, the Tribunal shall cause notice of the application to be given to the Director-General and to the Commonwealth agency to which the assessment was furnished. Notice of application

**57.** (1) Where an application for review of a security assessment is made in a case in which the Attorney-General has given a certificate certifying in accordance with paragraph 38 (2) (b), the Director-General shall, within 30 days after receipt of notice of the application, lodge with the Tribunal a copy of the certificate, together with a copy of the whole of the assessment. Director-General to lodge certain material with Tribunal

(2) The Tribunal shall not, at any time, inform the applicant of the existence of, or permit the applicant to have access to any copy or particulars of, a certificate of the Attorney-General referred to in sub-section (1) or any matter to which the certificate relates.

**58.** (1) Where an application for a review of a security assessment is made, the Tribunal shall review the security assessment in the manner provided by this section. Procedure at hearing

(2) The parties to the proceeding are the Director-General and the applicant, but the Commonwealth agency to which the security assessment was furnished is entitled to adduce evidence and make submissions.

(3) It is the duty of the Director-General to present to the Tribunal all relevant information available to him, whether favourable or unfavourable to the applicant.

(4) The member who is to preside, or is presiding, at the hearing may, at any time, require either or both of the parties to attend or be

represented before him for the purpose of conferring with him concerning the conduct of the review with a view to identifying the matters in issue or otherwise facilitating the conduct of the proceedings.

(5) The proceedings shall be in private and, subject to sub-sections (6) and (7), the Tribunal shall determine what persons may be present at any time.

(6) The applicant or a representative of the applicant shall not be present when the Tribunal is hearing submissions made by, or evidence adduced by, the Director-General or the Commonwealth agency to which the security assessment was furnished.

(7) The Director-General or a representative of the Director-General or of a Commonwealth agency shall not be present when the Tribunal is hearing submissions made by, or evidence given or adduced by, the applicant.

(8) The Tribunal shall first hear evidence adduced, and submissions made, by the Director-General and any evidence or submission that the Commonwealth agency to which the assessment was furnished may wish to adduce or make.

(9) After hearing evidence and submissions in accordance with sub-section (8), the Tribunal shall consider what further particulars (if any) that can, consistently with the requirements of security, be given to the applicant should, in the interests of justice, be so given and shall cause those particulars to be given accordingly.

(10) The Tribunal shall next permit the applicant, if he so desires, to give or adduce evidence before, and make submissions to, the Tribunal.

(11) The Tribunal may, of its own motion and at any stage of the proceedings, invite a person to give evidence, or cause a person to be summoned to give evidence, and, where it does so, may determine whether either or both of the parties is or are entitled to be present or represented when the evidence is given.

(12) Where the Tribunal considers that, by reason of evidence or matter adduced by the other party after a party has presented his case to the Tribunal, that party should be further heard, the Tribunal shall give to that party an opportunity of adducing further evidence or matter and for that purpose shall give to that party such particulars of the evidence or matter adduced by the other party as the Tribunal considers can be so given consistently with the requirements of security.

(13) Before giving to the applicant particulars of evidence adduced, or submissions made, by the Director-General, the Tribunal shall consult with the Director-General, as to the requirements of security.

(14) A member of the Tribunal may ask questions of a witness before the Tribunal and the presidential member presiding may require a witness to answer any such question.

(15) The Tribunal may dispose of a review by dismissing the application if the Tribunal is of opinion that the applicant has failed to prosecute his application with due diligence.

59. (1) If the Attorney-General certifies, by writing signed by him, that the disclosure of information concerning a specified matter, or the disclosure of the contents of a document, would be contrary to the public interest—

Certain documents and information not to be disclosed

- (a) by reason that it would prejudice security or the defence or international relations of Australia;
- (b) by reason that it would involve the disclosure of deliberations or decisions of the Cabinet or a Committee of the Cabinet or the Executive Council; or
- (c) for any other reason specified in the certificate that could form the basis for a claim by the Crown in right of the Commonwealth in a judicial proceeding that the information or the contents of the document should not be disclosed,

the following provisions of this section have effect.

(2) A person who is required by or under this Act to disclose the information or to produce the document to the Tribunal for the purposes of a proceeding is not excused from the requirement, but the Tribunal shall, subject to sub-sections (3), (4) and (6), do all things necessary to ensure that the information is not, or the contents of the document are not, disclosed to any person other than a member of the Tribunal as constituted for the purposes of the proceeding, and, in the case of a document produced to the Tribunal, to ensure the return of the document to the person by whom it was produced.

(3) Sub-section (2) does not have effect in relation to disclosure to the Director-General or his representative where the reason specified in the certificate is the reason referred to in paragraph (1) (a).

(4) Where the Attorney-General has certified in accordance with sub-section (1) that the disclosure of information or of the contents of a document would be contrary to the public interest but the certificate does not specify a reason referred to in paragraph (1) (a) or (b), the President may, if he is satisfied that the interests of justice outweigh the reason specified by the Attorney-General, authorize the disclosure of the information, or of the contents of the document, by the Tribunal to an applicant.

(5) In considering whether information or the contents of a document should be disclosed as mentioned in sub-section (4), the President shall take as the basis of his consideration the principle that it is desirable in the interest of securing the effective performance of the functions of the Tribunal that the parties to a proceeding should be made aware of all relevant matters but shall pay due regard to any reason specified by the Attorney-General in the certificate as a reason why the disclosure of the

information or of the contents of the document, as the case may be, would be contrary to the public interest.

(6) Nothing in this section prevents the disclosure of information or of the contents of a document to a member of the staff of the Tribunal in the course of the performance of his duties as a member of the staff of the Tribunal.

(7) This section excludes the operation, apart from this section, of any rules of law relating to the public interest that would otherwise apply in relation to the disclosure of information or of the contents of documents in proceedings before the Tribunal.

(8) Where the Attorney-General has given a certificate under sub-section (1) in respect of a document, this section applies in relation to a document that is a copy of that document as if the copy were the original document.

(9) For the purposes of this section, where the Director-General, in accordance with sub-section 57 (1), has lodged with the Tribunal a certificate of the Attorney-General given under sub-section 38 (2), the certificate shall be deemed to be a certificate certifying to the Tribunal that the disclosure of the information to which the certificate relates would be contrary to the public interest by reason that it would prejudice security.

(10) It is the duty of the Tribunal, notwithstanding that there may be no relevant certificate under this section, to ensure, so far as it is able to do so, that, in or in connection with proceedings before the Tribunal, information is not communicated or made available to a person contrary to the requirements of security.

**Findings of  
Tribunal**

**60.** (1) Upon conclusion of a review, the Tribunal shall make and record its findings in relation to the assessment, and those findings may express the opinion of the Tribunal as to the correctness of, or justification for, any opinion, advice or information contained in the assessment or as to the question to which the assessment relates.

(2) Subject to this section, the Tribunal shall cause copies of its findings to be given to the applicant, the Director-General and the Commonwealth agency to which the assessment was furnished.

(3) The Tribunal may direct that the whole or a specified part of its findings, so far as they relate to any matter that has not already been disclosed to the applicant, is not to be communicated to the applicant or is not to be communicated to the Commonwealth agency to which the assessment was furnished.

(4) Subject to any direction of the Tribunal, the applicant is entitled to publish, in such manner as he thinks fit, the findings of the Tribunal, so far as they have been communicated to him.

**61.** (1) Where an assessment has been reviewed by the Tribunal, every Commonwealth agency concerned with prescribed administrative action to which the assessment is relevant, and any tribunal, person or authority having power to hear appeals from, or to review, a decision with respect to any prescribed administrative action to which the assessment is relevant, shall treat the findings of the Tribunal, to the extent that they do not confirm the assessment, as superseding that assessment.

Effect of findings

(2) Where a law of the Commonwealth or of a Territory (other than the *Administrative Decisions (Judicial Review) Act 1977*) provides that a class of decisions that an authority or person is authorized or required to make in respect of prescribed administrative action is subject to appeal or review and empowers a tribunal, body or person to reverse or vary such a decision, or to direct the reversal or variation of such a decision, as a result of an appeal or review, the findings of the Security Appeals Tribunal on a relevant review under this Part are binding on that authority or person in making such a decision, and are also binding on that tribunal, body or person in exercising powers in or in connection with an appeal or review in respect of such a decision.

**62.** Subject to the Constitution but notwithstanding section 4 of the *Administrative Decisions (Judicial Review) Act 1977*, a decision or finding of the Tribunal is not subject to review by any court or other tribunal.

Findings not to be challenged

**63.** (1) At any time after the completion of a review, the applicant may apply to the Tribunal for a review of the findings of the Tribunal on the ground that he has fresh evidence of material significance that was not available at the time of the previous review.

Review of findings

(2) If the Tribunal is satisfied that the application is justified, it may review its previous findings, and this Act applies to and in relation to such a review and the findings in such a review as if it were the review of an assessment.

**64.** Where the Tribunal has made findings upon a review of an assessment, the Organization shall not make a further assessment in respect of the person concerned that is not in accordance with those findings except on the basis of matters occurring after the review or of which evidence was not available at the time of the review.

Restriction on further assessments after review

**65.** (1) Where—

- (a) before the commencement of this Act, the Organization furnished, or is alleged to have furnished, to a Commonwealth agency a security assessment, or a communication of a similar nature, concerning a person; or
- (b) after the commencement of this Act, the Organization has furnished, or is alleged to have furnished, to a Commonwealth agency a security assessment, or a communication of a similar

Reference of certain matters to Tribunal by Minister

nature, concerning a person, other than a security assessment of which a copy has been delivered to that person in accordance with this Part,

the Minister may, if he is satisfied that it is desirable to do so by reason of special circumstances, require the Tribunal to inquire and report to him upon any question concerning that action or alleged action of the Organization, and may require the Tribunal to review any such assessment or communication and any information or matter on which any such assessment or communication was based, and the Tribunal shall comply with the requirement and report its findings to the Minister.

(2) The constitution and procedure of the Tribunal under this section shall be as determined by the President.

(3) Sections 60 and 61 do not apply in relation to a review under this section but, when the Tribunal has made findings under this section, the Minister shall, subject to the requirements of security, take or cause to be taken such action in relation to those findings, by way of communication or publication of the findings or alteration of records, as he considers appropriate in the interests of justice.

#### *Division 5—Procedure and Evidence*

Representa-  
tion before  
Tribunal

**66.** At the hearing of a proceeding before the Tribunal, a party to the proceeding, or the Commonwealth agency to which the assessment was furnished, may appear in person, by a barrister or solicitor or, with the approval of the Tribunal, may be represented by some other person.

Procedure of  
Tribunal

**67.** (1) Subject to this Part, in a proceeding before the Tribunal—

- (a) the procedure of the Tribunal shall be as prescribed;
- (b) the proceeding shall be conducted with as little formality and technicality, and with as much expedition, as the requirements of this Act and a proper consideration of the matters before the Tribunal permit; and
- (c) the Tribunal is not bound by the rules of evidence but may inform itself on any matter in such manner as it thinks appropriate.

(2) The member presiding at the hearing of a proceeding before the Tribunal may, in respect of a matter not dealt with by this Act or the regulations, give directions as to the procedure to be followed at or in connection with the hearing.

Certain  
matters of  
privilege

**68.** (1) In a proceeding before the Tribunal, a spouse is competent, but not compellable, to disclose a communication made to him or her by the other spouse during the marriage.

(2) The rules relating to legal professional privilege that apply in relation to proceedings in the Supreme Court of the Australian Capital Territory apply in relation to a proceeding before the Tribunal.

**69.** (1) A person appearing as a witness before the Tribunal is not excused from answering a question, or producing a document, on the ground that the answer to the question, or the document, may tend to incriminate him. Incriminating answers

(2) Evidence of the answer given by a person to a question in evidence before the Tribunal is not admissible against him in any civil or criminal proceedings other than proceedings in respect of falsity of the answer or contempt of the Tribunal.

**70.** (1) For the purposes of a proceeding before the Tribunal, the Tribunal may take evidence on oath or affirmation. Power of Tribunal to take evidence

(2) For the purposes of a proceeding before the Tribunal, the Registrar or a Deputy Registrar shall, if directed to do so by the President, or by another member of the Tribunal who is to preside, or presides, at the hearing, or by a person authorized under sub-section (6), summon a person to appear before the Tribunal to give evidence and to produce such documents (if any) as are referred to in the summons.

(3) The member who presides at the hearing of a proceeding before the Tribunal—

- (a) may require a person appearing before the Tribunal at that hearing to give evidence either to take an oath or to make an affirmation; and
- (b) may administer an oath or affirmation to a person so appearing before the Tribunal.

(4) The oath or affirmation to be taken or made by a person for the purposes of this section is an oath or affirmation that the answers he will give to questions asked him will be true.

(5) A person summoned to appear before the Tribunal may request that he be represented by a barrister or a solicitor and upon such a request being made the Tribunal may allow the person to be so represented.

(6) Where the President, by reason of special circumstances, so directs and subject to any limitations specified by him, the power of the Tribunal to take evidence on oath or affirmation may be exercised on behalf of the Tribunal in relation to a particular proceeding by the member who is to preside at the hearing or by another person (whether a member or not) authorized by the President and, if the President so directs, that power may be exercised outside Australia.



(7) Where a person is authorized to take evidence in accordance with sub-section (6), the person has, for the purpose of taking that evidence, all the powers under sub-section (3) of the member who presides at the hearing of a proceeding and references in this Part (other than Division 3) to the Tribunal or to a member shall be read as including a person so authorized.

Restriction on publication of evidence and findings

**71.** The Tribunal may give directions prohibiting or restricting the publication of—

- (a) evidence given before the Tribunal;
- (b) the names of witnesses before the Tribunal;
- (c) matters contained in documents lodged with the Tribunal or received in evidence by the Tribunal; or
- (d) the whole or any part of its findings on a review.

#### *Division 6—General*

Legal assistance

**72.** (1) A person who has made, or proposes to make, an application to the Tribunal for a review of an assessment may apply to the Attorney-General for the provision of assistance under this section.

(2) Where an application is made by a person under sub-section (1), the Attorney-General may, if he is satisfied that it would involve hardship to that person to refuse the application and that, in all the circumstances, it is reasonable that the application should be granted, authorize the provision by the Commonwealth to that person, either unconditionally or subject to such conditions as the Attorney-General determines, of such legal or financial assistance in relation to the proceeding as the Attorney-General determines.

Protection of members, barristers and witnesses

**73.** (1) A member, or a person other than a member exercising powers under sub-section 70 (6), has, in the performance of his duties or the exercise of his powers, the same protection and immunity as a Justice of the High Court.

(2) A barrister, solicitor or other person appearing before the Tribunal has the same protection and immunity as a barrister has in appearing for a party in proceedings in the High Court.

(3) Subject to this Act, a person summoned to attend or appearing before the Tribunal as a witness has the same protection, and is, in addition to the penalties provided by this Act, subject to the same liabilities, as a witness in proceedings in the High Court.

Failure of witness to attend

**74.** A person served, as prescribed, with a summons to appear as a witness before the Tribunal shall not, without reasonable excuse—

- (a) fail to attend as required by the summons; or
- (b) fail to appear and report himself from day to day unless excused, or released from further attendance, by a member.

Penalty: \$1,000 or imprisonment for 3 months.

**75.** A person appearing as a witness before the Tribunal shall not, without reasonable excuse—

- (a) when required in pursuance of section 70 either to take an oath or make an affirmation—refuse or fail to comply with the requirement;
- (b) refuse or fail to answer a question that he is required to answer by the member presiding at the proceeding; or
- (c) refuse or fail to produce a document that he was required to produce by a summons under this Act served on him as prescribed.

Penalty: \$500 or imprisonment for 3 months.

Refusal to be sworn or to answer questions

**76.** A person shall not—

- (a) insult a member in or in relation to the exercise of his powers or functions as a member;
- (b) interrupt the proceedings of the Tribunal;
- (c) create a disturbance, or take part in creating or continuing a disturbance, in or near a place where the Tribunal is sitting;
- (d) contravene a direction under section 71; or
- (e) do any other act or thing that would, if the Tribunal were a court of record, constitute a contempt of that court.

Penalty: \$1,000 or imprisonment for 1 year.

Contempt of Tribunal

**77.** (1) The Governor-General shall cause such Registries of the Tribunal to be established as he thinks fit.

(2) The Governor-General shall designate one of the Registries as the Principal Registry.

Registries

**78.** (1) There shall be a Registrar of the Tribunal and such Deputy Registrars of the Tribunal as are required.

(2) The Registrar and the Deputy Registrars shall be appointed by the Minister and shall have such duties, powers and functions as are provided by this Act and the regulations and such other duties and functions as the President directs.

(3) The Registrar and the Deputy Registrars shall be persons appointed or employed under the *Public Service Act 1922*.

Officers of Tribunal

**79.** Where a document is required or permitted by this Act or the regulations to be lodged with the Tribunal, lodgment shall be effected by delivering the document at a Registry of the Tribunal.

Lodging of documents

**80.** Where a proceeding before the Tribunal has concluded, the President may cause a document furnished to the Tribunal for the purposes of the proceeding to be returned to the person by whom it was furnished.

Return of documents at completion of proceeding

## Secrecy

**81.** (1) A person who is or has been a member or an officer of the Tribunal shall not, either directly or indirectly, except for the purposes of this Act—

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

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

(2) A person who is or has been a member or an officer of the Tribunal shall not be required to produce in a court any document of which he has custody, or to which he has access, by virtue of his office or employment under or for the purposes of this Act, or to divulge or to communicate to a court any information obtained by him by reason of such an office or employment, except when it is necessary to do so for the purposes of this Act.

(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 Tribunal for the purposes of this Part or otherwise related to proceedings under this Part.

## Fees for witnesses

**82.** (1) A person summoned to appear as a witness before the Tribunal is entitled to be paid fees, and allowances for expenses, fixed by or in accordance with the regulations.

(2) Subject to sub-section (3), the fees and allowances shall be paid—

- (a) where the witness was summoned at the request of the applicant—by the applicant; and
- (b) in any other case—by the Commonwealth.

(3) The Tribunal may, in its discretion, order that the fees and allowances of a witness referred to in paragraph (2) (a) shall be paid, in whole or in part, by the Commonwealth.

## Annual report by President

**83.** (1) The President shall, as soon as practicable after 30 June in each year, prepare and furnish to the Minister a report concerning the general operation during that year of the provisions of this Part relating to the Tribunal.

(2) The Minister shall cause the report of the President to be laid before each House of the Parliament within 15 sitting days of that House after the receipt of the report by the Minister.

#### PART V—STAFF OF ORGANIZATION

**84.** (1) Subject to this Act, the Director-General may, on behalf of the Commonwealth—

Employment  
of officers  
and  
employees

- (a) employ, under agreements in writing, such officers of the Organization as he thinks necessary for the purposes of this Act; and
- (b) employ such temporary employees and casual employees of the Organization as he thinks necessary for those purposes.

(2) The Director-General shall not employ a person as an officer except—

- (a) in an office the designation and salary or salary range of which have been determined, or are deemed to have been determined, under sub-section 85 (1); and
- (b) upon the terms and conditions of employment that are in force under section 86 in relation to the employment of persons as officers at the date on which that person is so employed.

(3) An agreement under this section may be varied from time to time by further agreement.

**85.** (1) The designations of officers in the Organization, other than the office of Director-General, and the salaries or salary ranges applicable to those offices, shall be such as are determined from time to time by the Chairman of the Public Service Board, the Secretary to the Attorney-General's Department and the Director-General.

Designation  
of officers,  
&c.

(2) The designations of offices in the Organization immediately before the date of commencement of this Act, and the salaries or salary ranges applicable to those offices immediately before that date, shall be deemed to have been determined under sub-section (1).

**86.** Officers and employees of the Organization are not subject to the *Public Service Act 1922* but, subject to this Act, the terms and conditions upon which the Director-General shall employ persons as officers, and the terms and conditions of employment applicable to temporary and casual employees, shall be such as are determined from time to time by the Chairman of the Public Service Board, the Secretary to the Attorney-General's Department and the Director-General.

Conditions  
of  
employment

Special provisions relating to existing employees

**87.** (1) A person who, immediately before the date of commencement of this Act, was employed in the Organization under an agreement in writing with the Commonwealth shall, unless and until he agrees to accept other terms and conditions, continue to be employed upon the terms and conditions specified in that agreement.

(2) A person, not being a person to whom sub-section (1) applies, who was, immediately before the date of commencement of this Act, employed in the Organization shall, until other terms and conditions applicable to him are determined under section 86, continue to be employed upon the terms and conditions applicable to him immediately before that date.

Rights of public servants

**88.** If a person employed as an officer or full-time employee of the Organization, was, immediately before employment, an officer of the Australian Public Service or a person to whom the *Officers' Rights Declaration Act 1928* applied—

- (a) he retains his existing and accruing rights;
- (b) for the purpose of determining those rights, his service as an officer or full-time employee of the Organization shall be taken into account as if it were service in the Australian Public Service; and
- (c) the *Officers' Rights Declaration Act 1928* applies as if this Act and this section had been specified in the Schedule to that Act.

Termination of employment of officers

**89.** The employment of an officer of the Organization shall not be terminated except in accordance with a term or condition of his employment.

Regulations relating to staff

**90.** (1) The regulations may make provision for the employment of officers otherwise than under agreements in writing and may, in respect of officers so employed, make provision from time to time for their terms and conditions of employment (including salaries).

(2) The regulations may make provision for the terms and conditions of employment applicable to temporary and casual employees.

(3) Regulations made in accordance with this section have effect notwithstanding sections 84, 85 and 86.

(4) Regulations made in accordance with this section shall not apply to the employment of an officer employed under an agreement made before the commencement of the first regulations so made in relation to officers except to the extent agreed in writing between the officer and the Director-General.

(5) Regulations referred to in this section shall be made only in accordance with a recommendation made to the Minister by the Public Service Board after consultation with the Director-General.

**91.** The Director-General and officers and employees of the Organization shall be deemed to be Commonwealth officers for the purposes of the *Crimes Act* 1914.

Application  
of Crimes  
Act

**92.** (1) A person shall not, except with the consent in writing of the Minister or of the Director-General, publish or cause to be published in a newspaper or other periodical publication, or by radio broadcast or television, or otherwise make public, any matter stating, or 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 of the Organization or is in any way connected with such an officer, employee or agent.

Publication  
of identity of  
officer of  
Organization

Penalty: \$1,000 or imprisonment for 1 year.

(2) Nothing in this section applies to the broadcasting or reporting of proceedings in the Parliament.

(3) A prosecution for an offence against sub-section (1) shall be instituted only by or with the consent of the Attorney-General.

## PART VI—MISCELLANEOUS

**93.** (1) The person who held office as Director-General of Security under the repealed Act immediately before the date of commencement of this Act continues to hold office on and after that date as if he had been appointed on that date as Director-General of Security under this Act for a period equal to the remainder of his term of office under the repealed Act, and the terms and conditions on which he held office under the repealed Act, so far as they relate to any matter not dealt with by this Act, continue to apply as if they had been determined by the Governor-General under this Act.

Saving as to  
Director-  
General

(2) Where a Judge held the office of Director-General of Security under the repealed Act, his service in that office shall, for all purposes, be taken to have been service as the holder of his office as a Judge.

(3) In this section, “the repealed Act” means the *Australian Security Intelligence Organization Act* 1956.

**94.** (1) The Director-General shall, as soon as practicable after each year ending on 30 June, furnish to the Minister a report on the activities of the Organization during that year.

Annual  
report

(2) A copy of a report furnished under sub-section (1) shall be given to the Leader of the Opposition in the House of Representatives, but it is the duty of the Leader of the Opposition to treat it as secret.

**Regulations**

**95.** The Governor-General may make regulations, not inconsistent with this Act, prescribing all matters required or permitted by this Act to be prescribed, or necessary or convenient to be prescribed for carrying out or giving effect to this Act.

---

**NOTE**

1. Act No. 113, 1979; assented to 25 October 1979.