

ARTHUR ROBINSON & HEDDERWICKS  
LIBRARY  
THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA  
HOUSE OF REPRESENTATIVES

---

*(As read a first time)*

**NATIONAL CRIME AUTHORITY AMENDMENT BILL  
(NO. 2) 1992**

**TABLE OF PROVISIONS**

**Section**

1. Short title etc.
2. Commencement
3. Interpretation
4. Insertion of new section:
  - 4A. Meaning of action taken by the Authority, a member or a member of the staff of the Authority
5. Performance of functions
6. Directions and guidelines to Authority
7. Disclosure of summons or notice etc. may be prohibited
8. Secrecy
9. Duties of the Committee etc.
10. Insertion of new Part:

**PART IIIA—INSPECTOR-GENERAL**

*Division 1—Establishment and functions of Inspector-General  
of the National Crime Authority*

- 55AA. Inspector-General of the National Crime Authority
- 55AB. Acting Inspector-General
- 55AC. Appointment of the holder of a judicial office as Inspector-General etc.
- 55AD. Functions of Inspector-General

*Division 2—Complaints*

- 55AE. Complaint
- 55AF. Form of complaints
- 55AG. Inquiry into complaint

TABLE OF PROVISIONS—*continued*

Section

- 55AH. What will happen if complaint is not pursued?
- 55AI. Special arrangements for persons in custody
- 55AJ. Preliminary inquiries

*Division 3—Inquiries*

- 55AK. When may the Inspector-General conduct an inquiry?
- 55AL. Inspector-General to inform Minister and Chairperson before commencing an inquiry
- 55AM. Conduct of inquiries
- 55AN. Power to obtain information and documents
- 55AO. Power to require a person to attend before the Inspector-General
- 55AP. Scales of expenses
- 55AQ. Offences
- 55AR. Liability under another law in relation to the giving of information etc.
- 55AS. Entry to premises of the Authority

*Division 4—Reports*

- 55AT. Reports
- 55AU. Response to complainant
- 55AV. Action as a result of reports

*Division 5—Inspector-General's monitoring function in relation to privacy matters*

- 55AW. Minister may direct Inspector-General to inquire
- 55AX. Arrangement to obtain information or document

*Division 6—Administrative matters*

- 55AY. Terms and conditions of the appointment
- 55AZ. Remuneration and allowances
- 55AZA. Leave of absence
- 55AZB. Resignation
- 55AZC. Termination of appointment
- 55AZD. Disclosure of interests
- 55AZE. Staff

*Division 7—Miscellaneous*

- 55AZF. Delegation by Inspector-General
- 55AZG. Protection from civil actions
- 55AZH. Annual report

1990-91-92

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA  
HOUSE OF REPRESENTATIVES

---

Presented and read a first time, 16 September 1992

(Parliamentary Secretary to the Attorney-General)

**A BILL**

FOR

**An Act to amend the *National Crime Authority Act 1984***

The Parliament of Australia enacts:

**Short title etc.**

1.(1) This Act may be cited as the *National Crime Authority Amendment Act (No. 2) 1992*.

5 (2) In this Act, "**Principal Act**" means the *National Crime Authority Act 1984*<sup>1</sup>.

**Commencement**

2.(1) This Act commences on a day to be fixed by Proclamation.

10 (2) If this Act does not commence under subsection (1) within 6 months beginning on the day on which it receives the Royal Assent, it commences on the first day after the end of that period.

### Interpretation

3. Section 4 of the Principal Act is amended by inserting in subsection (1) the following definitions:

“**‘final report’** means a final report prepared by the Inspector-General under section 55AT; 5

**‘inquiry’** means an inquiry that the Inspector-General is authorised to conduct under Part IIIA;

**‘Inspector-General’** means the Inspector-General of the National Crime Authority;

**‘Inspector-General of Intelligence and Security’** means the Inspector-General of Intelligence and Security appointed under the *Inspector-General of Intelligence and Security Act 1986*; 10

**‘judicial office of a State’** means an office of Judge of a court created under a law of a State;

**‘member of the staff of the Inspector-General’** means a member of the staff of the Inspector-General mentioned in section 55AZE; 15

**‘Parliamentary Joint Committee’** means the Parliamentary Joint Committee on the National Crime Authority for the time being constituted under Part III;

**‘sensitive information’** means any information the disclosure of which might prejudice: 20

(a) the safety or reputation of a person; or

(b) the fair trial of a person who has been or may be charged with an offence; or

(c) the effectiveness of an investigation by the Authority; or 25

(d) the operations of law enforcement agencies;”.

4. After section 4 of the Principal Act the following section is inserted:

**Meaning of action taken by the Authority, a member or a member of the staff of the Authority** 30

“4A.(1) In this Act, unless the contrary intention appears, the taking of action includes:

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

(b) the failure or refusal:

(i) to take any action; or 35

(ii) to make a decision; or

(iii) to make a recommendation.

“(2) In this Act, an action taken by a member is taken to be taken by the Authority if the member takes the action in his or her capacity as a member, whether or not: 40

- (a) the action is taken for or in connection with, or is incidental to, the performance of the functions of the Authority; or
- (b) the taking of the action is within the duties of the member.”.

**Performance of functions**

- 5        5. Section 12 of the Principal Act is amended by omitting subsections (4) and (5).

**Directions and guidelines to Authority**

6. Section 18 of the Principal Act is amended by inserting after subsection (3) the following subsection:

- 10        “(3A) If a direction or guideline to be given or furnished under subsection (1) is related to a matter concerning the protection of the privacy of individuals, the Minister must state this in the direction or guideline.”.

**Disclosure of summons or notice etc. may be prohibited**

- 15        7. Section 29A of the Principal Act is amended by adding at the end the following subsection:

“ (7) If:

- 20        (a) under this section, a prohibition is in force in relation to the disclosure of information relating to a summons issued under section 28 or a notice issued under section 29; and
- 25        (b) apart from this subsection, a body would be required, under the *Privacy Act 1988*, to make a record about the disclosure of information about a person because of the summons or notice;
- such a record must not be made so long as the prohibition is in force under this section.”.

**Secrecy**

8. Section 51 of the Principal Act is amended:

- 30        (a) by adding at the end of subsection (1) the following word and paragraphs:  
“; and (c) the Inspector-General; and  
              (d) a member of the staff of the Inspector-General.”;
- 35        (b) by omitting from subsection (3) “A person to whom this section applies” and substituting “A person mentioned in paragraph (1)(a) or (b)”;
- (c) by inserting after subsection (3) the following subsection:  
              “(3A) A person who is, or has been, a person mentioned in paragraph (1)(c) or (d) (including a person who is, or has been, appointed to act as such a person) must not be required:

*National Crime Authority (Amendment)*  
(No. 2) No. , 1992

(a) to produce in a court any document of which the person has custody or control in the course of, or because of, the performance of the person's functions under Part IIIA of this Act; or

(b) to divulge or communicate to a court any information obtained by the person in the course of, or because of, the performance of the person's functions under Part IIIA of this Act;

unless it is necessary to do so for the purposes of Part IIIA of this Act.”.

**Duties of the Committee etc.**

9. Section 55 of the Principal Act is amended:

(a) by inserting in paragraph (1)(c) “both Houses of” after “report to”;

(b) by inserting after paragraph (1)(c) the following paragraph:  
“(ca) to examine each annual report of the Inspector-General and report to both Houses of the Parliament on any matter appearing in, or arising out of, any such annual report;”;

(c) by omitting subsection (2) and substituting the following subsections:

“(2) In the performance of its duties, the Committee may, in writing, request the Chairperson to:

(a) produce to it any document held by the Authority; or

(b) to divulge or communicate to it any information held by the Authority;

except to the extent that it contains, or is, sensitive information.

“(3) If the Chairperson refuses a request made under subsection (2) on the ground that the document or information to which the request relates contains, or is, sensitive information, the Committee may refer the request to the Minister.

“(4) If the Committee refers the request to the Minister, the Minister must:

(a) in writing, determine whether the document or information contains, or is, sensitive information; and

(b) include reasons for that decision in the determination if doing so would not disclose any sensitive information; and

(c) provide copies of that determination to the Chairperson, the Committee and the Inspector-General.

“(5) The Minister may, before making the determination, in writing, direct the Inspector-General to inquire into the question

whether the document or information contains, or is, sensitive information.

“(6) If the Minister makes a direction under subsection (5), the Inspector-General must:

- 5           (a) conduct an inquiry under that direction; and  
          (b) report to the Minister upon completion of the inquiry; in accordance with Part IIIA.”.

10. After Part III of the Principal Act the following Part is inserted:

**“PART IIIA—INSPECTOR-GENERAL**

10       **“Division 1—Establishment and functions of Inspector-General of the National Crime Authority**

**Inspector-General of the National Crime Authority**

“55AA.(1) The office of Inspector-General of the National Crime Authority is established.

15       “(2) The Inspector-General is to be appointed by the Governor-General.

““(3) Before a recommendation is made to the Governor-General for the appointment of a person as the Inspector-General, the Minister must consult with the Inter-Governmental Committee.

20       “(4) The Governor-General may, for the purpose of appointing to the office of Inspector-General a person who is the holder of a judicial office of a State, enter into such arrangement with the State as is necessary to secure that person’s services.

25       “(5) An arrangement under subsection (4) may provide for the Commonwealth to reimburse a State with respect to the services of the person to whom the arrangement relates.

““(6) A person may hold office as the Inspector-General while holding another office created by an Act.

**Acting Inspector-General**

30       “55AB.(1) The Minister may appoint a person to act as the Inspector-General:

- (a) during a vacancy in the office of Inspector-General; or  
          (b) during any period, or during all periods, when the Inspector-General:

- 35           (i) is absent from duty or from Australia; or  
          (ii) is, for any reason, unable to perform the duties of the office.

“(2) Before appointing a person to act as the Inspector-General, the Minister must consult with the Inter-Governmental Committee.

**Appointment of the holder of a judicial office as Inspector-General etc.**

“55AC.(1) If a person who is the holder of a judicial office is appointed:

5

- (a) to the office of Inspector-General; or
- (b) to act in the office of Inspector-General;

then:

- (c) that appointment or any service by the person under that appointment does not affect the person’s tenure, rank, title, status, precedence, salary, annual or other allowances or other rights or privileges as the holder of that judicial office; and 10
- (d) for all purposes, the person’s service as the Inspector-General is taken to be service as the holder of that judicial office.

“(2) In this section: 15

‘judicial office’ means:

- (a) an office of Judge of a court created by the Parliament; or
- (b) an office the holder of which has, because of the holding of that office, the same status as a Judge of a court created by the Parliament. 20

**Functions of Inspector-General**

“55AD.(1) The functions of the Inspector-General are:

- (a) to inquire into complaints made to the Inspector-General about actions taken by:
  - (i) the Authority; or 25
  - (ii) a person who is, or has been:
    - (A) a member; or
    - (B) a member of the staff of the Authority;
      - in performance or purported performance of the person’s powers or functions under this Act; and 30
- (b) on the Minister’s direction under subsection 55(5), to inquire into the question whether any document or information to which that direction relates contains, or is, sensitive information; and
- (c) on the Minister’s direction under section 55AW, to monitor compliance by the Authority with any directions or guidelines mentioned in subsection 18(3A). 35

“(2) The function of the Inspector-General under paragraph (1)(a) does not include inquiry into any matter to the extent that the matter:

- (a) directly relates to the terms and conditions of the appointment of a member of the Authority; or 40



- (b) directly relates to the terms and conditions of the employment of a member of the staff of the Authority.

**“Division 2—Complaints**

**Complaint**

- 5 “55AE.(1) This section applies to any action taken by:
- (a) the Authority; or
  - (b) a person who is, or has been:
    - (i) a member; or
    - (ii) a member of the staff of the Authority;
- 10 in performance or purported performance of the person’s powers or functions under this Act.

“(2) A complaint about an action to which this section applies may be made:

- (a) by a person who is aggrieved by that action; or
- 15 (b) by a member of the Inter-Governmental Committee; or
- (c) by the Parliamentary Joint Committee.

“(3) The complaint must be made directly to the Inspector-General if it is made by:

- (a) a member of the Inter-Governmental Committee; or
- 20 (b) the Parliamentary Joint Committee.

“(4) If the complaint is made to any of the following bodies or persons:

- (a) the Authority, or a member, or a member of the staff of the Authority;
- 25 (b) the Inter-Governmental Committee or a member of it;
- (c) the Parliamentary Joint Committee or a member of it;

the body or person must transfer the complaint to the Inspector-General.

**Form of complaints**

- 30 “55AF.(1) A complaint may be made to the Inspector-General orally or in writing.

“(2) If a complaint is made orally, the Inspector-General must:

- (a) cause the complaint to be put in writing; or
- (b) require the complainant to put the complaint in writing.

- 35 “(3) If the Inspector-General requires a complainant to put a complaint in writing and the complainant fails to do so, the Inspector-General may:

- (a) refuse to inquire into the complaint; or

(b) refuse to inquire into the complaint further;  
until the complainant puts the complaint in writing.

### **Inquiry into complaint**

“55AG.(1) If:

(a) a complaint is made to the Inspector-General in respect of an action to which section 55AE applies; and 5

(b) inquiring into the action in response to the complaint is within the functions of the Inspector-General under section 55AD;

the Inspector-General must, subject to this section, inquire into the action. 10

“(2) If the Inspector-General is satisfied that:

(a) the complainant became aware of the action complained of more than 12 months before the complaint was made; or

(b) the complainant does not have a sufficient interest in the action; or 15

(c) the complaint is frivolous or vexatious or was not made in good faith; or

(d) having regard to all the circumstances of the case, an inquiry or further inquiry into the action is not warranted; 20

then, the Inspector-General may:

(e) decide not to inquire into the action; or

(f) if the Inspector-General has begun to inquire into the action, decide not to inquire into the action further.

“(3) Subject to subsection (5), if the complainant has caused the action: 25

(a) to be reviewed by a court or tribunal; or

(b) otherwise reviewed or inquired into under a law of the Commonwealth or a State;

the Inspector-General must not inquire into, or continue to inquire into, the action unless the Inspector-General is of the opinion that there are special reasons for doing so. 30

“(4) Subject to subsection (5), if, in the Inspector-General’s opinion:

(a) the complainant has or had a right to cause the action to be reviewed by a court or tribunal, or otherwise reviewed or inquired into under a law of the Commonwealth or a State, but has not exercised that right; and 35

(b) it would be reasonable for the complainant to exercise, or would have been reasonable for the complainant to have exercised, that right;

then, the Inspector-General may: 40

(c) decide not to inquire into the action; or

- (d) if the Inspector-General has begun to inquire into the action, decide not to inquire into the action further.

“(5) If:

- (a) the action was taken by a person while the person was a member of:
- (i) the Australian Federal Police; or
  - (ii) the Police Force of a State; and
- (b) the Inspector-General is satisfied that the complaint can be reviewed or inquired into under a law of the Commonwealth or a State that relates to complaints made in respect of members of that Police Force;

the Inspector-General must not inquire into the action.

**What will happen if complaint is not pursued?**

“55AH. If the Inspector-General decides:

- (a) not to inquire into; or
- (b) not to further inquire into;

a complaint, the Inspector-General must, in writing, inform the complainant, the Minister and the Chairperson of that decision.

**Special arrangements for persons in custody**

“55AI.(1) In this section:

‘custodian’, in relation to a detainee, means:

- (a) the person in whose custody the detainee is detained; or
- (b) any other person performing duties in connection with that detention;

‘detainee’ means a person who is detained in lawful custody by an authority of the Commonwealth or a State.

“(2) If a detainee requests a custodian to provide facilities to enable him or her to make a complaint to the Inspector-General under this Act, a custodian must:

- (a) provide the detainee with facilities for:
- (i) preparing the complaint in writing; and
  - (ii) furnishing in writing any information to the Inspector-General after the complaint has been made; and
  - (iii) enclosing the complaint or any such information in a sealed envelope; and
- (b) without undue delay, send the sealed envelope to the Inspector-General; and
- (c) without undue delay, deliver to the detainee any sealed envelope addressed to the detainee and sent by the Inspector-General that comes into the possession or under the control of the custodian.

“(3) A sealed envelope mentioned in subsection (2) must not be opened by a person other than the addressee or a person acting on behalf of the addressee.

“(4) For the purposes of subsections (2) and (3), the Inspector-General may make arrangements with the appropriate authority of a State for the identification and delivery of sealed envelopes sent by the Inspector-General to a detainee in that State.

### **Preliminary inquiries**

“55AJ. If a complaint is made to the Inspector-General, the Inspector-General may make inquiries of the Chairperson for the purpose of:

- (a) determining whether the Inspector-General is authorised to inquire into the complaint; or
- (b) if the Inspector-General is authorised to inquire into the complaint—determining whether the Inspector-General should inquire into the complaint.

### **“Division 3—Inquiries**

#### **When may the Inspector-General conduct an inquiry?**

“55AK. The Inspector-General may conduct an inquiry into a matter if conducting the inquiry is within the Inspector-General’s functions under section 55AD.

#### **Inspector-General to inform Minister and Chairperson before commencing an inquiry**

“55AL. The Inspector-General must, before conducting an inquiry (other than an inquiry conducted under a direction of the Minister made under subsection 55(5) or 55AW(1)), inform the Minister and Chairperson that the Inspector-General proposes to conduct the inquiry.

#### **Conduct of inquiries**

“55AM.(1) An inquiry by the Inspector-General must be conducted:

- (a) in private; and
- (b) subject to this Division, in such manner as the Inspector-General thinks fit.

“(2) Subject to subsections (3) and (4), it is not necessary for a person (including a complainant) to be given an opportunity to appear before the Inspector-General or before any other person in connection with an inquiry by the Inspector-General.

“(3) The Inspector-General must not make a report in relation to an inquiry in which the Inspector-General sets out opinions that are, either expressly or impliedly, critical of the Authority unless the

Inspector-General has, before completing the inquiry, given the Chairperson a reasonable opportunity to:

- (a) appear before the Inspector-General; and
- (b) make oral or written submissions in relation to the matters that are the subject of the inquiry.

“(4) If the Inspector-General proposes to set out in a report in relation to an inquiry opinions that are, either expressly or impliedly, critical of a person, the Inspector-General must give the person a reasonable opportunity to:

- (a) appear before the Inspector-General; and
- (b) make oral or written submissions in relation to the matters that are the subject of the inquiry;

unless doing so would, in the Inspector-General’s opinion, involve the disclosure of sensitive information.

“(5) If the Chairperson or a person is given an opportunity to appear before the Inspector-General under subsection (3) or (4), the Chairperson or person may, with the Inspector-General’s approval, be represented by another person.

“(6) The Inspector-General may, at any time before completing an inquiry, discuss any matter relevant to the inquiry with the Minister.

“(7) If, at any stage of the inquiry, the Inspector-General forms the opinion that:

- (a) there is evidence that a member, or a member of the staff of the Authority, has been guilty of a breach of duty or of misconduct; and
- (b) the evidence is of sufficient weight for the Inspector-General to act under this subsection;

the Inspector-General must bring the evidence to the notice of:

- (c) in the case of evidence of a breach of duty or misconduct of the Chairperson—the Minister; or
- (d) in any other case—the Chairperson.

### **Power to obtain information and documents**

“55AN.(1) If the Inspector-General has reasonable ground for believing that a person has the possession or control of any information or documents (including documents that are copies of other documents) relevant to a matter being inquired into by the Inspector-General, the Inspector-General may, by written notice, require the person:

- (a) to give to the Inspector-General any such information; or
- (b) to produce to the Inspector-General any such documents.

“(2) The notice is to specify:

- (a) the information or documents required to be given or produced to the Inspector-General; and
- (b) the manner by which, and the time within which, the information is to be given or the documents are to be produced; and
- (c) the effects of subsections 55AQ(1) and (4).

“(3) If a document is produced to the Inspector-General under subsection (1), the Inspector-General:

- (a) may take possession of the document; and
- (b) may make copies of or take extracts from the document; and
- (c) may retain possession of the document for such period as is necessary for the purpose of the inquiry; and
- (d) during that period, must permit a person to inspect the document if the person would be entitled to inspect it if it were not in the Inspector-General’s possession.

#### **Power to require a person to attend before the Inspector-General**

“55AO.(1) If the Inspector-General has reasonable ground for believing that a person is capable of giving information relevant to a matter being inquired into by the Inspector-General, the Inspector-General may, by written notice given to the person, require the person to:

- (a) attend before the Inspector-General; and
- (b) answer questions relevant to the matter.

“(2) The notice is to specify:

- (a) the place at which and the time at or within which the person is to attend before the Inspector-General; and
- (b) the effects of subsections 55AQ(2), (3) and (4).

“(3) The Inspector-General may:

- (a) require the person to be sworn or to make an affirmation; and
- (b) administer an oath or affirmation for that purpose; and
- (c) examine the person on oath or affirmation.

“(4) The oath or affirmation is an oath or affirmation that the evidence the person will give will be true.

#### **Scales of expenses**

“55AP. The regulations may provide for scales of expenses to be allowed to persons required to give information or produce documents under section 55AN or 55AO.

**Offences**

“55AQ.(1) A person must not, without reasonable excuse, refuse or fail:

(a) to give information; or

(b) to produce a document;

when required to do so under section 55AN.

Penalty: Imprisonment for 6 months.

“(2) A person must not, without reasonable excuse, refuse or fail:

(a) to be sworn; or

(b) to make an affirmation;

when required to do so under section 55AO.

Penalty: Imprisonment for 6 months.

“(3) A person must not, after being given a notice under subsection 55AO(1), refuse or fail, without reasonable excuse, to comply with the notice or to answer a question that the Inspector-General requires the person to answer.

Penalty: Imprisonment for 6 months.

“(4) A person is guilty of an offence if:

(a) the person is required to give information under section 55AN or to answer a question under section 55AO; and

(b) the person gives information or an answer to the question that is, to the person’s knowledge, false or misleading in a material particular.

Penalty: Imprisonment for 12 months.

**Liability under another law in relation to the giving of information etc.**

“55AR.(1) A person is not excused from giving any information or producing a document under section 55AN, or answering a question under section 55AO, on the ground that the giving of the information, the production of the document or the answering of the question:

(a) would contravene a law of the Commonwealth or a State; or

(b) would be contrary to the public interest; or

(c) might tend to incriminate the person; or

(d) might make the person liable to a penalty; or

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

“(2) In spite of subsection (1):

(a) the giving of the information, the production of the document, or the answering of the question; or

(b) any information, document or thing obtained as a direct or

indirect consequence of doing the things mentioned in paragraph (a);

is not admissible in evidence against the person in any criminal proceedings other than proceedings under, or arising out of, subsection 55AQ(4).

5

“(3) A person is not liable to any penalty under any law of the Commonwealth or a State only because the person has given information, produced a document or answered a question when required to do so under section 55AN or 55AO.

### **Entry to premises of the Authority**

10

“55AS.(1) For the purposes of an inquiry, the Inspector-General may, at any reasonable time, enter any premises occupied by the Authority.

“(2) The Inspector-General must notify the Chairperson before exercising the power under subsection (1).

15

### **“Division 4—Reports**

#### **Reports**

“55AT.(1) After the Inspector-General has completed an inquiry (other than an inquiry conducted under section 55AW), the Inspector-General must:

20

- (a) prepare a draft report setting out the Inspector-General’s conclusions and recommendations as a result of the inquiry; and
- (b) give a copy of the draft report to the Chairperson; and
- (c) if the Chairperson provides comments on the draft report to the Inspector-General within a reasonable time after being given a copy of it:
  - (i) take account of those comments in preparing the final report; and
  - (ii) if the Inspector-General considers it appropriate—set out the Inspector-General’s response to any of those comments in the final report; and
- (d) give the Minister and the Chairperson each a copy of the final report.

25

30

“(2) The Inspector-General must include in a report prepared under this section:

35

- (a) the Inspector-General’s reasons for the conclusions and recommendations set out in the report; and
- (b) if the Inspector-General considers that restitution or compensation is warranted in the case—a recommendation to that effect.

40



**Response to complainant**

“55AU.(1) If the Inspector-General has conducted an inquiry under this Act following a complaint, the Inspector-General must give a written response relating to the inquiry:

- 5       (a) to the complainant; and  
      (b) if subsection 55AE(4) applies—to the body or person that transferred the complaint.

10       “(2) The Inspector-General must not give the response to the complainant until the Minister and the Inspector-General have agreed that the proposed response will not disclose sensitive information.

**Action as a result of reports**

“55AV.(1) If:

- 15       (a) the Inspector-General has given a copy of a report prepared under section 55AT to the Chairperson; and  
      (b) the Chairperson takes or proposes to take any action as a result of the conclusions and recommendations set out in the report, the Chairperson must, in writing, give details of the action taken or proposed to be taken to the Inspector-General.

20       “(2) If, in the Inspector-General’s opinion, the Chairperson fails, within a reasonable period, to take appropriate action in relation to the conclusions and recommendations set out in such a report, the Inspector-General may:

- 25       (a) discuss the matter with the Minister; and  
      (b) prepare a report relating to that matter; and  
      (c) give the Minister and Chairperson each a copy of that report.

***“Division 5—Inspector-General’s monitoring function in relation to privacy matters***

**Minister may direct Inspector-General to inquire**

30       “55AW.(1) The Minister may, by written notice, direct the Inspector-General to inquire into any matter that relates to the compliance by the Authority with any directions or guidelines mentioned in subsection 18(3A).

“ (2) The notice:

- 35       (a) may specify that:  
          (i) inquiries be conducted periodically; or  
          (ii) inquiries be conducted in respect of particular aspects of the directions or guidelines; or  
          (iii) inquiries be conducted in respect of compliance by the Authority with the directions or guidelines in respect of  
40       a specified period of time; and

- (b) must specify the manner in which the Inspector-General is to provide reports of the inquiries to the Minister.

“(3) The Inspector-General must conduct inquiries and provide reports to the Minister in accordance with the notice.

#### **Arrangement to obtain information or document**

5

“55AX. The Inspector-General may, for the purpose of inquiries conducted under section 55AW, make arrangement with the Chairperson for the provision to the Inspector-General, on a regular basis, of documents or information held by the Authority.

#### **“Division 6—Administrative matters**

10

#### **Terms and conditions of the appointment**

“55AY.(1) The Inspector-General holds office for such period (not exceeding 3 years) as is specified in the instrument of appointment.

“(2) Subject to subsection (3), a person is eligible to be re-appointed as the Inspector-General.

15

“(3) A person may not be appointed as the Inspector-General more than twice.

“(4) A person who is not a Judge holds office as Inspector-General on such terms and conditions (if any) in respect of matters not provided for by this Act as are determined by the Minister.

20

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

“(6) A person must not be appointed to the office of Inspector-General on a full-time basis:

(a) if the person has reached 65; or

25

(b) for a period that extends beyond the day on which the person will reach 65.

#### **Remuneration and allowances**

“55AZ.(1) Subject to this section, the Inspector-General is to be paid such remuneration:

30

(a) as is determined by the Remuneration Tribunal; or

(b) if no determination of that remuneration is in operation—as is prescribed.

“(2) The Inspector-General is to be paid such allowances as are prescribed.

35

“(3) Subsections (1) and (2) have effect subject to the *Remuneration Tribunal Act 1973*.

“(4) Subject to subsection (5), if a person who is appointed as the Inspector-General is:

(a) a Judge; or

5 (b) a full-time holder of any other office created by another Act; the person is not, while receiving salary or annual allowances as such a person or such an office holder, entitled to remuneration or allowances under this Act.

10 “(5) The Minister may, by written determination, specify allowances that are payable to the Inspector-General if the Inspector-General is also the holder of an office that is specified in the determination.

### Leave of absence

“55AZA.(1) Subject to section 87E of the *Public Service Act 1922*, a person appointed as the Inspector-General has such recreation leave entitlements as are determined by the Remuneration Tribunal.

15 “(2) The Minister may grant the Inspector-General leave of absence, other than recreation leave, on such terms and conditions as to remuneration or otherwise as the Minister determines.

### Resignation

20 “55AZB. A person appointed as the Inspector-General may resign that office by writing signed by the Inspector-General and delivered to the Governor-General.

### Termination of appointment

25 “55AZC.(1) The Governor-General may terminate the appointment of the Inspector-General for misbehaviour or physical or mental incapacity.

“(2) The Governor-General must terminate the appointment of the Inspector-General if:

(a) the Inspector-General:

- 30 (i) becomes bankrupt; or  
(ii) applies to take the benefit of a law for the relief of bankrupt or insolvent debtors; or  
(iii) compounds with his or her creditors; or  
(iv) makes an assignment of his or her remuneration for the benefit of such creditors; or

35 (b) the Inspector-General, without reasonable excuse, contravenes section 55AZD; or

(c) in the case of a person holding office as Inspector-General on a full-time basis—the person:

(i) engages, without the Minister's approval, in paid

employment outside the duties of the office (other than as the holder of another office created by an Act); or

- (ii) is absent from duty, other than on leave, for 14 consecutive days or for 28 days in any period of 12 months.

5

“(3) Subsections (1) and (2) do not apply if the Inspector-General is a Judge.

“(4) If:

- (a) a person appointed as the Inspector-General was a Judge at the time of the appointment; and

10

- (b) the person ceases to be a Judge;

the Governor-General may terminate the appointment of that person.

### Disclosure of interests

“55AZD. The Inspector-General must give written notice to the Minister of all interests (pecuniary or otherwise) that the Inspector-General has or acquires and that could conflict with the proper performance of the Inspector-General’s functions.

15

### Staff

“55AZE.(1) The staff necessary to assist the Inspector-General (**‘the Inspector-General’s staff’**) must be persons appointed or employed under the *Public Service Act 1922*.

20

“(2) The Inspector-General has the powers exercisable by a Secretary under the *Public Service Act 1922* in relation to the Inspector-General’s staff as if it were a separate Department of the Australian Public Service.

25

“(3) If the Inspector-General also holds office as the Inspector-General of Intelligence and Security, a person may be appointed or employed as a member of the Inspector-General’s staff to assist him or her in relation to:

- (a) the Inspector-General’s functions under this Act; and

30

- (b) the functions of the Inspector-General of Intelligence and Security under the *Inspector-General of Intelligence and Security Act 1986* (**‘the IGIS Act’**).

“(4) A person appointed or employed under subsection (3) is taken to be a member of the staff mentioned in subsection 32(1) of the IGIS Act.

35

***“Division 7—Miscellaneous***

**Delegation by Inspector-General**

5 “55AZF. The Inspector-General may, in writing, delegate to a member of the staff of the Inspector-General the Inspector-General’s powers under section 55AN, 55AO or 55AS.

**Protection from civil actions**

“55AZG.(1) Neither the Inspector-General nor a person who is a member of the staff of the Inspector-General is liable to an action or other proceeding for damages if:

- 10 (a) the action or proceeding is for or in relation to any act done or omitted to be done by the Inspector-General or the person; and  
15 (b) the Inspector-General or the person has done or omitted to do the act in good faith in performance or purported performance of any function, or in exercise or purported exercise of any power, under this Act.

“(2) If:

- (a) a complaint has been made to the Inspector-General; or  
20 (b) a document has been produced, or information or evidence has been given, to the Inspector-General;  
a person is not liable to an action, suit or proceeding in respect of loss, damage or injury of any kind suffered by another person only because the complaint was made, the document was produced or the information or evidence was given.

**Annual report**

25 “55AZH.(1) The Inspector-General must, as soon as practicable after each 30 June, prepare and furnish to the Minister a report of the operations of the Inspector-General during the year that ended on that 30 June.

30 “(2) The Inspector-General must include in each annual report the Inspector-General’s comments on each inquiry conducted by the Inspector-General in relation to the Inspector-General’s functions mentioned in paragraph 55AD(1)(a) during the year to which the report relates.

35 “(3) The Inspector-General must take reasonable care to ensure that sensitive information is not disclosed in any annual report.

“(4) The Minister must cause a copy of each report to be laid before each House of the Parliament as soon as practicable after the report is received by the Minister.”.

---

**NOTE**

1. No. 41, 1984, as amended. For previous amendments, see Nos. 123 and 165, 1984; Nos. 104 and 193, 1985; Nos. 89 and 141, 1987; Nos. 65, 66, 75, 87 and 110, 1988; No. 108, 1989; Nos. 4 and 118, 1990; Nos. 28, 70 and 122, 1991; and Nos. 44 and 94, 1992.





9 780644 419680