ASIO & THE ARCHIVES ACT

THE EFFECT ON ASIO OF THE OPERATION OF THE ACCESS PROVISIONS OF THE ARCHIVES ACT

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

REPORT OF THE PARLIAMENTARY JOINT COMMITTEE
ON THE AUSTRALIAN SECURITY INTELLIGENCE ORGANIZATION

April 1992

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Mr P Milton, MP

Staff: Anne Hazelton
Secretary

PARLIAMENTARY JOINT COMMITTEE ON THE AUSTRALIAN SECURITY INTELLIGENCE ORGANIZATION

MEMBERSHIP OF COMMITTEE 36TH PARLIAMENT

Mr Keith Wright, MP (Presiding Member)

Senator M J Macklin (to 21 August 1990)
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Staff: Donald Nairn
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Anne Hazelton
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TERMS OF REFERENCE

To inquire into and report upon how the activities of the Australian Security Intelligence Organization (ASIO) are affected by the operation of the *Archives Act 1983* taking into account:

(a) the adequacy, appropriateness and effectiveness of the access provisions of the Archives Act insofar as they relate to the activities of ASIO;

(b) the implications for the privacy of the individual and/or his or her immediate family of the release of information;

(c) the options available to overcome any identified concerns for security arising from the current provisions of the Archives Act, including the option recommended in the RCASIA report on ASIO;

(d) the law and practice concerning the release of security and intelligence information in overseas countries, particularly the UK, Canada, the US and NZ;

(e) resource implications of the options considered; and

(f) any other matters that emerge which may have a bearing on the inquiry.

ABBREVIATIONS

ASIO	The Australian Security Intelligence Organization
Archives	Australian Archives
Archives Act	*Archives Act 1983*
AAT	Administrative Appeals Tribunal
ASIO Act	*Australian Security Intelligence Organization Act 1979*
DIO	Defence Intelligence Organisation
DSD	Defence Signals Directorate
DFAT	Department of Foreign Affairs and Trade
FOI	Freedom of Information
FOI Act	*Freedom of Information Act 1982*
IGIS	Inspector-General of Intelligence and Security
ONA	Office of National Assessments
RCASIA	Royal Commission on Australian Security Intelligence Agencies

Table of Legislation

Archives Act 1983
Australian Security Intelligence Organization Act 1979
Privacy Act 1988
Freedom of Information Act 1982
Ombudsman Act 1976
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Attorney-General

The Hon. Michael Duffy M.P.
Parliament House
Canberra ACT 2600

SEC

Mr Keith Wright MP
Presiding Member
Parliamentary Joint Committee on ASIO
Parliament House
CANBERRA ACT 2600

Dear Mr Wright Keith,

Thank you for your recent letter enclosing a copy of the Committee's Report on the Effect on ASIO of the operation of the Access provisions of the Archives Act.

For the purposes of section 92N(2) of the *ASIO Act*, I am satisfied that the report does not disclose a matter referred to in section 92(1) of the Act.

Yours sincerely

MICHAEL DUFFY

SUMMARY OF RECOMMENDATIONS

RECOMMENDATION 1:

That guidelines be issued by the Minister to the Intelligence Agencies requiring that foreign material received in confidence should be exempted from disclosure for such period as that material is restricted from public access in the country of origin (paragraph 3.2.4 page 25).

RECOMMENDATION 2:

That the Archives Act should be amended to preclude any appeal to the AAT from a certification by the Inspector-General of Intelligence and Security that the guidelines issued by the Minister respecting protection of foreign derived material has been properly observed (paragraph 3.2.4 page 25).

RECOMMENDATION 3:

That the suppression of the identity of sources, agents and operatives should be guaranteed in guidelines for a period of 30 years from the death of the agent, source or operative (paragraph 3.4.5 page 28).

RECOMMENDATION 4:

That there should be no provision made to enable ASIO to exclude records from public access on the grounds of privacy unrelated to security (paragraph 3.6.4 page 33).

RECOMMENDATION 5:

That ASIO records continue to be subject to the access provisions of the Archives Act. The open access period in respect of ASIO records should continue to be 30 years from the creation of the record. ASIO should continue to be obliged to make records in the open access period available save where the record is an exempt record under section 33 of the Archives Act (paragraph 4.3.1 page 38).

RECOMMENDATION 6

That Conclusive Certificates issued under the Archives Act should be subject to a 'sunset clause'. Section 34 of the Act should be amended to specify that a Conclusive Certificate issued by the Minister under the provision shall lapse after three years from the day it came into effect (paragraph 4.7.3 page 45).

RECOMMENDATION 7

That subsection 42(3) of the Archives Act relating to internal reconsideration of decisions should be amended to make it clear that the proper officer to make the decision on an application regarding access to records of ASIO should be the Director-General of Security (paragraph 4.7.3 page 45).

RECOMMENDATION 8

That an applicant for an internal reconsideration dissatisfied with the decision of the Director-General of Security should be entitled to have that decision reviewed by the Inspector-General of Intelligence and Security who should report his findings to the Minister who should determine the matter (paragraph 4.7.3 page 45).

RECOMMENDATION 9

There should be a right of appeal to the Administrative Appeals Tribunal from the decision of the Minister except in the circumstances referred to in Recommendation 2 (paragraph 4.7.3 page 45).

RECOMMENDATION 10

That the Government ensure that ASIO is provided with the necessary resources to enable it to discharge its statutory obligations under the Archives Act (paragraph 4.8.23 page 52).

RECOMMENDATION 11

That ASIO establish a special Archives Unit within the Organization to manage requests for access to ASIO records in the open access period. The Unit should:

- be headed by a senior intelligence officer qualified as an historian/archivist whose identity should be capable of being known to the public and who should be authorised by ASIO to negotiate with researchers on behalf of the agency;
- develop indices and finding aids that can be made available to the public without infringing national security;
- devote some resources to preparing records, in advance, for release as they fall into the open access period (paragraph 4.8.25 page 52).

RECOMMENDATION 12

That guidelines be developed under section 8A of the ASIO Act to facilitate spot checks by the Inspector-General of Intelligence and Security and reviews of complaints as envisaged by the Committee in Recommendation 8 (paragraph 4.8.23

page 52).

RECOMMENDATION 13

That the proposed Archives Unit adopt a procedure that would categorise requests according to the following criteria:

> **fast track:** where the request is small in resource terms, e.g., individuals requesting their own file or that of a family member. These requests should be met within the 90-day statutory deadline;
>
> **bulk access:** for those requests of a more complicated nature where access to material over a broad spectrum is desired. The researcher should be able to negotiate with ASIO both in regard to the scale of the request and the time in which it can be provided (paragraph 4.8.23 page 53).

RECOMMENDATION 14

That in relation to current intelligence records, a person who wishes to ensure that information concerning himself/herself is accurate, may bring that information to the attention of the Inspector-General of Intelligence and Security who will bring it to the attention of the responsible Intelligence Agency for appropriate action (paragraph 4.9.10 page 55).

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INTRODUCTION

The Committee

The Parliamentary Joint Committee on the Australian Security Intelligence Organization is established under Part VA of the *Australian Security Intelligence Organization Act 1979* (the ASIO Act). The Committee was first appointed on 31 August 1988 and was reappointed in the present 36th Parliament on 6 May 1990.

The functions of the Committee are contained in subsection 92C(1) of the ASIO Act and are:

(a) to review aspects of the Organization that are referred to the Committee in accordance with subsection 92C (2);

(b) to report to the Minister (the Attorney-General) and subject to section 92N, to each House of the Parliament, the Committee's comments and recommendations following such a review.

Subsection 92C(2) provides that matters may be referred to the Committee by the Minister, or by a House of the Parliament whereupon the Committee shall review that matter. Under subsection 92C(3) the Committee may by resolution request the Minister to refer a particular matter for review whereupon the Minister may refer that matter.

Subsection 92C(4) declares that the functions of the Committee do not include -

(a) reviewing a matter that relates to the obtaining or communicating by ASIO of foreign intelligence;

(b) reviewing an aspect of the activities of the Organization that does not affect any person who is an Australian citizen or a permanent resident;

(c) reviewing a matter, including a matter that relates to intelligence collection methods or sources of information, that is operationally sensitive;

(d) originating enquiries into individual complaints concerning the activities of the Organization.

Section 92N provides that the Committee shall not, in a report to a House of the Parliament disclose -

(a) the identity of a person who has been an officer, employee or agent of ASIO, or any information from which the identity of such a person could reasonably be inferred;

(b) classified material or information on the methods, sources, targets

or results of the operations or procedures of the Organization the public disclosure of which would, or would be likely to, prejudice the performance by the Organization of its functions.

The Committee is required by subsection 92N(2) to obtain the advice of the Minister as to whether the disclosure of any part of the report would, or would be likely to, disclose any of the above matters before presenting its advice to Parliament.

The Review

The Review into the access provisions of the Archives Act was initially referred to the Committee on 28 November 1989 pursuant to sub-section 92C(2) of the ASIO Act.

The terms of reference for the Review were advertised and submissions were sought from the public by public advertisement during the weekend of 9 and 10 December 1989. Submissions were received from those individuals and organisations marked with an asterisk in the list of submissions at Appendix B. However, no evidence was taken in the 35th Parliament as the operations of the Committee were terminated by the dissolution of the House of Representatives for the 1990 general election.

The matter was again referred to the Committee in the present Parliament on 17 May 1990. The reference was re-advertised on 26 May 1990 and submissions were received from the individuals and organisations listed in Appendix B.

Under subsection 92F(2) of the ASIO Act the Committee is required to conduct the Review in private unless the Committee, with the approval of the Minister, otherwise determines. The Committee determined by resolution at its meeting on 20 September 1990 that part of its review into the access provisions of the Archives Act be conducted in public in accordance with the advice of the

Minister, the Attorney-General, the Honourable Michael Duffy, MP. The Attorney's advice is at Appendix C.

The Committee met on 24 occasions and held five Public Hearings of Evidence in relation to the Review. The evidence taken by the Committee in public and the submissions and evidence authorised for publication by the Committee have been produced in bound format by the Parliamentary Reporting Service and are available on request from the Committee Secretariat.

CHAPTER 1

THE CONTEXT OF THE INQUIRY

1.1 The Committee was asked to inquire into and report on how the activities of ASIO are affected by the operation of the *Archives Act 1983* taking into account the various matters specified in terms of reference (a) to (f).

1.2 Before turning to the specific terms of reference it is pertinent to establish a context in which these various matters may be considered.

1.3 The Open Access Provisions of the *Archives Act 1983*

1.3.1 The *Archives Act 1983* established a legal framework for preserving and providing access to Commonwealth Government records. The Archives was initially established as part of the Commonwealth National Library in 1944 to ensure the safety of those Commonwealth records which would be required to compile the official history of the Second World War. Its role gradually extended from this origin to encompass the identification, retrieval, evaluation and storage of Commonwealth records generally. In recognition of this expanded role, the Archives unit became known as the Commonwealth Archives Office in 1961. In the late 1960s, the McMahon Government instituted the practice of releasing records which were older than 30 yearsinto public access.

1.3.2 In 1974 the organisation was renamed the Australian Archives and a Director-General was appointed in 1975. The operations of the Archives were placed on a statutory footing by the *Archives Act 1983*. The legislation had a long gestation as its introduction was closely linked to that of the *Freedom of Information Act 1982* (FOI Act).

1.3.3 Under the Archives Act the Archives is responsible to ensure that:

> all existing and future Commonwealth records of administrative, community, legal and research values are properly accessible so that through these records
>
> (a) the needs of government are met in relation to:
>
> . safeguarding national interests;
> . dealing with the public; and
> . operating the machinery of government.
>
> (b) the needs of the public are met in relation to
>
> . safeguarding their interests;
> . satisfying occupational needs or pursuits; and
> . understanding the Australian nation.[1]

1.3.4 While the general management provisions of the *Archives Act* apply to the Intelligence Agencies, those bodies have discretion in the matter of the extent to which their records will be subject to the control of the Director-General of the Australian Archives.

1.4 The Royal Commission on Australia's Security and Intelligence Agencies (RCASIA)

1.4.1 The Royal Commission, under Mr Justice Hope, presented its report in December 1984. It was tabled in Parliament on 22 May 1985.[2] ASIO had made submissions to the RCASIA complaining that its capacity to function effectively would be diminished as a result of the public right of access to its records under the *Archives Act*.

1.4.2 ASIO submitted that the 30-year limit did not provide for a long

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[1] *Australian Archives Annual Report 1990-91*, p.1

[2] Royal Commission on Australia's Security Intelligence Agencies -*Report on the Australian Security Intelligence Organization - December 1984*, Parliamentary Paper No. 232/1985

enough passage of time for the secure release of many ASIO documents. After only 30 years, release could still reveal sources, methods of operation and other *information damaging to the credibility and reputation of the Organization.* Such disclosure would have serious effects upon ASIO's ability to fulfil its statutory responsibilities.[3] The Royal Commissioner reported that ASIO was also concerned that under the *Archives Act*, Archives staff could have access to ASIO records.

1.4.3 The Organization's 'preferred option' was that the Director-General of Security should be empowered under the *Archives Act* 'to authorise the release of records on a selective basis at a time when security and privacy considerations were no longer relevant'.

1.4.4 The Royal Commissioner observed in relation to these submissions that:

> 'the effective functioning of a security service rests on its capacity to conceal its methods from public gaze and to keep confidential its sources of information. In many cases the passage of 30 years will remove the risk of damage from disclosure, but this will not always be so. Some information, even of that age, will be of value to hostile intelligence services. It may not be possible for ASIO to identify the material of which that will be true.'[4]

1.4.5 In relation to the privacy of individuals, particularly the operatives of the Organization, it was commented that there is a strong public interest in the protection of the privacy of information. ASIO's ability to protect the identity of an agent is critical to its ability to collect intelligence. The Royal Commissioner stated that:

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[3] *RCASIA Report 1985, p.156*

[4] *RCASIA Report, 1985*, para 7.62, p.156

> 'I can see no public interest in allowing, as part of a general archival program, the identity of an individual who has acted as an agent of the nation's security service to be made public during the agent's lifetime or, indeed, after the agent's death, because of possible effects on family.'

1.4.6 These considerations led the Royal Commissioner to conclude and to recommend :

> that the *Archives Act* be amended to remove ASIO's operational records, not administrative records, from the requirement to hand records over to the Archives after 30 years and from the application of the 30 year rule in regard to public access while allowing the Director-General a discretion to hand over to the Archives for public access records of 30 or more years old where he considers that this can be done consistently with the interests of security and personal privacy.

The Government did not accept this recommendation of the RCASIA.

1.4.7 When tabling the RCASIA report the Prime Minister said

> '... the Government will ensure, however, that the intelligence community concerns and experiences are addressed in the review of the *Archives Act* scheduled for 1987.'[5]

1.4.8 He pointed out that the provisions of section 29 of the Act were developed to have the effect of exempting the intelligence agencies from the 'mandatory transfer' provisions contained in section 27 of the Act and beyond this, in the event of a request for access, the Act provides a range of exemption provisions and for conclusive ministerial certificates to protect security sensitive information. He said that the matter would be further examined in a review of the *Archives Act* scheduled for 1987.[6] The foreshadowed review of the *Archives Act* has not yet

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[5] House of Representatives Debates, 22 May 1985, p.2888

[6] *Australian Archives Annual Report, 1984-85*, p.5

taken place.

1.4.9 The present Review is not the proposed review of the *Archives Act*. The Committee has been concerned in this Inquiry with those operations of the Australian Archives relevant to the question posed to the Committee. That is to say, how the activities of ASIO only are affected by the operations of the *Archives Act*.

1.4.10 The *Archives Act* has now applied to ASIO from the time of proclamation. It is evident from the tone of comments in its annual reports that the Organization has never been happy with the decision that it should be bound by the access provisions of the *Archives Act*. In each of its annual reports since 1984, ASIO has referred to the onerous nature of its obligation to abide by the requirements of the legislation. For example in its Report for 1986-87[7] the Organization stated:

> 'Since June 1984, ASIO has been subject to the provisions of the *Archives Act* 1983. Unlike virtually all countries with which ASIO exchanges information, Australia's Archives legislation does not provide a mechanism for the class exemption of the documents of security and intelligence agencies from public access. Thus the Organization's activities in the Archives area are primarily concerned with examining all requests made under the Act for access to ASIO records and determining what material if any should be exempted from public access in meeting such requests.'

1.4.11 In this and subsequent reports ASIO alluded to the heavy workload weighing on the resources of the Organization in complying with requests for access and its equally burdensome involvement in subsequent applications for review of the initial decision either at internal review or on appeal to the Administrative Appeals Tribunal (AAT) as provided for under the Act.

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[7] Australian Security Intelligence Organization - *Report to Parliament - 1986-87* - Parliamentary Paper No. 36/88, pp.29-30

1.4.12 In its Report for 1988-89[8] the Organization observed:

> 'As reported last year, ASIO is seeking a review of the legislation governing the '30 year release' provision. ASIO's concerns are twofold. First, it believes the exemption provisions do not give enough assurance that sensitive material which threatens the confidentiality of sources and jeopardises the continuing exchange of important intelligence with cooperating foreign intelligence agencies can be safeguarded. Second, the present system gives rise to a heavy resource burden in both the assessing of access requests and the preparation of evidence to be heard in appeals to the AAT.'

1.4.13 These concerns were articulated in a working paper prepared during 1987-88 by representatives of all the Australian Intelligence Agencies.[9]

1.4.14 In its Report to Parliament for 1989-90 ASIO reported that the matter was now under review by this Committee.

1.4.15 The terms of reference for the Review require the Committee to report on how the activities of ASIO are affected by the operations of the *Archives Act*. ASIO in its annual reports and submissions has provided evidence that its activities have been detrimentally affected by the obligation to conform to the access provisions of the *Archives Act*.

1.4.16 The requirement has certainly imposed a considerable resource burden on ASIO. The Organization has also provided evidence that the obligation to make records available after 30 years has serious security implications. ASIO's principal request is for the closed access period applicable to ASIO records to be extended to 50 years and for restrictions on the right of appeal to the AAT against

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[8] Australian Security Intelligence Organization - *Report to Parliament - 1988-89* - Parliamentary Paper No. 65/90, pp.32-34

[9] Ibid, p.34

its decisions to deny access on security grounds.

1.4.17 *In ASIO's submission this is necessary to ensure that Australia will* continue to get the full cooperation of its foreign intelligence partners, who are concerned that, because of Australia's liberal access laws, material they provide in confidence is not adequately protected. ASIO is also concerned that the *Archives Act* provisions do not sufficiently guarantee the security of information about its methods of operation or the identity of its agents, operatives and sources

1.4.18 The Committee acknowledges the validity of these concerns, but believes that they can be met otherwise than by extending the closed access provisions or limiting unduly the citizen's right to appeal to the AAT from ASIO decisions denying access.

1.4.19 Further the Committee accepts the following extract from the submission of the Director-General of Security to the Committee:

> 'The *Archives Act* should not be confused with the Freedom of Information Act. It is not an instrument of accountability and contains no major provisions for altering records in which inaccuracies exist.
>
> Since the passage of the *Archives Act* measures have been taken to provide for the political accountability of the Organization by the creation of the office of the Inspector-General of Intelligence and Security and the appointment of the Parliamentary Committee. ASIO regards these subsequent events as disposing of the argument that the *Archives Act* should be regarded as a means of making ASIO accountable.'

1.4.20 In that submission the Director-General went on to say:

> 'ASIO concedes that its records will be of value to historians and other scholars. However, it does not accept the criticisms that it has been uncooperative and has not adhered to the spirit of the Act.

ASIO believes that responsible researchers will accept that its records can rarely be released in toto and are prepared to accept that exceptions are not claimed capriciously or with malice.'

CHAPTER 2

THE ACCESS PROVISIONS OF THE ARCHIVES ACT AS THEY RELATE TO ASIO

2.1 The access provisions are contained in Divisions 2 and 3 of Part V of the *Archives Act* 1983. The procedure established by section 27 of the *Archives Act* is to require all Commonwealth institutions to deposit their Commonwealth records with the Archives once the records have been in existence for 25 years unless the agency is, by section 29, exempted from doing so. Exemptions apply, for example, to the records of the Parliament and the courts. Subsection 29(8) exempts ASIO and the other Intelligence Agencies[10] absolutely from the requirement in section 27 to transfer records to the Archives. The Intelligence Agencies, unlike other Commonwealth institutions, retain control over all records until a request is made of the Archives for the release of a particular record.

2.2 Open Access Period

2.2.1 Section 31 of the Act provides that the Archives shall cause all Commonwealth records in the open access period that are in the custody of the Archives or of a Commonwealth institution, other than exempt records, to be made available for public access.

2.2.2 Records are defined very broadly in sub-section 3(1) to include an array of items other than documents. These include sound recordings, coded storage devices, magnetic tape or disk, microform, photograph, film, map, plan or model or a painting or other pictorial or graphic work.

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[10]The Australian Secret Intelligence Service (ASIS); the Defence Signals Directorate (DSD); the Defence Intelligence Organisation (DIO); the Office of National Assessments (ONA); and the Inspector-General of Intelligence and Security (IGIS).

2.2.3 It is provided by subsection 3(7) that a record is in the open access period if a period of 30 years has elapsed since the end of the year ending on 31 December in which the record came into existence.

2.3 Records Exempt from Production

2.3.1 Records included in the exempt class under section 33 of the Act include information or matter, the disclosure of which:

- could reasonably be expected to cause damage to the security, defence or international relations of the Commonwealth [33(1)(a)];
- would constitute a breach of confidence being information or matter communicated in confidence by or on behalf of a foreign government [33(1)(b)];
- would have an adverse effect on the financial or property interests of the Commonwealth ... and would not on balance be in the public interest [33(1)(c)];
- would be a breach of confidence [33(1)(d)];
- could be reasonably expected to prejudice the ... enforcement or proper administration of the law, or, disclose or enable a person to ascertain, the existence or identity of a confidential source of information in relation to the enforcement or administration of the law; or endanger the life or physical safety of any person [33(1)(e)];
- would be likely to prejudice the fair trial of a person, or the impartial adjudication of a particular case, or disclose lawful methods or procedures for preventing, detecting, investigating or dealing with matters arising out of breaches or evasions of the

law; or to prejudice the maintenance or enforcement of lawful methods for the protection of public safety [33(1)(f)];

- would unreasonably disclose information relating to the personal affairs of any person, including a deceased person [33(1)(g)];

- the disclosure of matters that would release trade and business secrets or prejudice the business affairs of any person.

2.4 *Conclusive Certificates*

2.4.1 Section 34 prescribes a procedure where a Minister may sign a certificate to the effect that he is satisfied that the record, or part of it (subsection 34(2)), contains information or matter of a kind referred to in paragraphs 33(1)(a) and 33(1)(b) - that is, relating to security or defence and matter communicated on or on behalf of a foreign government.

2.4.2 Where the appeal concerns a Conclusive Certificate then the AAT is limited by subsection 44(5) to considering only the question of whether there are reasonable grounds for the claim. It may not examine the propriety of the reasons for the issue of the certificate by the Minister, and shall determine only the question of whether reasonable grounds exist for the claim. However, the AAT may, under section 49, require the production of the record in respect of which the Conclusive Certificate has been issued.

2.4.3 Such a certificate, so long as it remains in force, establishes conclusively that the record is an exempt record. Regulations under subsection 34(4) can prescribe a period within which a certificate remains in force. The Minister is empowered by sub-section 34(8) to delegate the power to issue Conclusive Certificates. Such a delegation has been made in favour of the Director-General of Security.

2.4.4 Where the AAT finds that the claimed exemption is not reasonable, it is then for the Minister to decide whether or not to revoke the certificate. If a decision is made not to revoke, the Minister is required by section 45 to notify the applicant and, within a specified time, lay a copy of the instrument before both Houses of the Parliament. The notification is to contain reasons for the decision.

2.4.5 Section 35 deals with the procedures that apply where a Commonwealth institution wishes to claim exemption for a record. The provision does not apply to ASIO or the other Intelligence Agencies which retain control over their records and are not obliged to negotiate with the Archives respecting claims for exemption.

2.5 Applications for Access to ASIO Records

2.5.1 Section 36 provides that where the Archives is required to cause a record to be made available for public access, any person is entitled, subject to the exemptions, to have access to that record.

2.5.2 A person wishing to obtain access to an ASIO record approaches the Archives in the first instance with the request. The application is then registered and transferred to ASIO, which then advises the Archives whether or not it holds the records and whether exemption is or is not claimed under section 33.

2.5.3 Where ASIO claims exemption it retains custody of the record. ASIO does, however, transfer to the Archives all of its folios that it regards as wholly or partially available for release. Partially-available folios are those which are suitable for release subject to certain further security-related deletions. When the wholly or partially available folios are provided to the Archives, ASIO also provides a list of the exemptions it wishes to be applied to them. The Archives then examines the file making the deletions requested by ASIO, and such other deletions on personal privacy grounds that it has the responsibility for claiming under subsection 33(1)(g) of the *Archives Act*.

2.5.4 Once so transferred to Archives the file remains there permanently as an accessible document. ASIO retains only those folios for which it claims complete exemption.

2.5.5 An exempt record may be severable. Under section 38, the Archives may make arrangements for access to be given to part of a record where exemption is claimed for only part of it. Section 39 provides that the Archives is not obliged to give information as to the existence of a record where that record is an exempt record and can state that it neither confirms nor denies the existence of the record.

2.6 90-day requirement

2.6.1 Subsection 40(3) states that the Archives shall take all reasonable steps to enable the applicant to be notified of a decision on the application as soon as practicable, but in any case not later than 90 days after the receipt of the application.

2.6.2 Subsection 40(8) provides that where the request is not responded to within 90 days then the Archives is deemed to have refused the request so that the right of appeal to the AAT immediately accrues.

2.6.3 The Archives is required under subsection 40(5) to give a written response to a request for access stating the reason for refusal when the request is refused.

2.7 Internal Reconsideration

2.7.1 Where an applicant is not satisfied and wishes to challenge the grounds on which material has been withheld, he/she applies initially to the Archives for an internal reconsideration under section 42. Under this provision applicants have frequently been given access to additional material and records have come to

light that were not made available to the applicant initially.[11] Under subsection 42(2) the Archives shall reconsider the decision. When giving evidence, Dr J Stokes, Director, Client and Access Services, Australian Archives, described this process:

> 'At each stage Archives is involved more than at the earlier stage. The original decision is basically ASIO's, except on material which is being exempted purely on personal sensitivity grounds, when it is a decision for the Archives. However our people when implementing the ASIO decisions always check them. If they feel that there is some inconsistency or something they do not understand or some problem they will consult ASIO.
>
> At the internal reconsideration stage, the decision is ultimately a decision for the Director-General of the Australian Archives or his delegate which, in the case of ASIO records is me. There is close consultation with ASIO on the decision, but the decision is ultimately one for the Archives and not for ASIO.'[12]

ASIO has submitted strongly to the Committee that responsibility for decisions on internal reconsideration should be for the Director-General of Security to make, rather than the Director-General of Archives.

2.8 Appeal to the Administrative Appeals Tribunal

2.8.1 The legislation makes provision for review of the decisions to refuse access to a document or a class of documents. Under section 43 a person may apply to the AAT for a review of the decision of the Archives where the Archives has refused access because:

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[11]Evidence, pp.278-309

[12]Evidence, p.75.

- exemption has been claimed for the record [43(1)(a)];
- it is not practicable to extend partial access already granted to a record [43(1)(b)];
- the record has been withheld from public access pending examination under section 35 to determine whether exemption should be claimed for it [43(1)(c)];
- a determination has been made under section 37 that the record should be withheld for safe custody and proper preservation reasons [43(1)(d)];
- it would under subsection 36(4) interfere unreasonably with operations of the Archives, or a Commonwealth institution;
- it would not be appropriate given the physical nature of the record;
- release would be detrimental to its preservation or would infringe copyright [43(1)(e)];
- from a refusal by Archives to allow extra time for the applicant to apply for internal reconsideration.

2.8.2 Under subsection 43(2) an applicant must decide whether to apply to the AAT or for internal reconsideration. The person may not make simultaneous applications to the AAT and for internal reconsideration. But that person may appeal to the AAT from an adverse decision for internal review. The AAT can, under subsection 43(7), require that the applicant be given better particulars about a decision he wishes to challenge.

2.9 Powers of the Administrative Appeals Tribunal

2.9.1 The powers of the AAT are prescribed in section 44. The AAT has the power to review any decision of the Archives and to decide any matters in relation to that application that could have been decided by the Archives. The decision of the AAT has the same effect that a decision of the Archives would have had.

2.10 Onus of Proof

2.10.1 In proceedings before the AAT, the onus of proof establishing that the decision was justified or that the AAT should give a decision adverse to the applicant is, by section 51, placed on the Archives.

2.11 Composition of the Administrative Appeals Tribunal

2.11.1 Subsection 46(2) of the *Archives Act* provides that the AAT, when considering Archives matters, will always be constituted by either three presidential members of the AAT or a presidential member sitting alone. Lay members of the AAT do not sit on Archives applications.

2.11.2 Section 47 prescribes procedures to be followed by the AAT when it is considering an application respecting the Minister's Conclusive Certificate. The AAT is required to hold the proceedings in private at any time where a document tendered by the Commonwealth institution or on behalf of a Minister is being considered or where submissions are being made in relation to a claim for access to a record protected by a Conclusive Certificate.

2.11.3 Other provisions are designed to ensure that the contents of documents in respect of which exemption is claimed are not disclosed in the course of the proceedings. The AAT can, under section 47, make orders prohibiting the publication of any evidence or information given to the AAT, the contents of any records or other documents given in evidence or of any submission made to the AAT.

2.12 Accelerated or Special Access

2.12.1 Section 56 provides that the Minister, can in accordance with arrangements approved by the Prime Minister, cause records not in the open access period to be made available for public access, or to a nominated person.

Where records are made available to a person on conditions, it is an offence for the person to contravene those conditions.

2.13 Submissions concerning the Adequacy, Appropriateness and Effectiveness of these Provisions

2.13.1 The existing provisions were strongly endorsed in submissions received in response to the public advertisement. These submissions in the main were made by historians and other scholars engaged in research, by librarians, archivists and journalists, and by or on behalf of universities and groups concerned with civil liberties. In many cases submissions were made for the liberalisation of, and improvements to, the existing access provisions.

2.13.2 The existing legislation in its present form was also strongly endorsed by the Archives and the Advisory Council for the Australian Archives. These institutions were also of the view that experience so far had not indicated any cause for concern that the provisions did not adequately protect the legitimate interests of the Intelligence Agencies.

2.13.3 ASIO and the representatives appearing on behalf of the Intelligence Agencies and the Australian Federal Police, while acknowledging the desirability of the objectives of the legislation, submitted that, in relation to security, the provisions were deficient in specified respects.

2.13.4 ASIO summarised its general position on the question[13] before the Committee in the following terms:

- that ASIO should remain subject to the *Archives Act*;
- that the exemption criteria of the *Archives Act* should remain unchanged;

[13]Evidence, p.33

- that certain changes should be made which will better protect ASIO's sources, methods of operation, and provide a more appropriate review method and reduce costs.

2.13.5 ASIO submitted that the objective of the *Archives Act* was not to ensure accountability but was about:

- preservation of Commonwealth Records;
- regulating Commonwealth record keeping practices;
- providing public access to Commonwealth records.

2.13.6 It was only in relation to the last of these that ASIO was seeking changes to the present legislation. It requested:

- extension of the closed access period, in respect of ASIO records, from 30 years to 50 years;

- that information which could damage the security, defence, or international relations of the Commonwealth and information passed to the Commonwealth in confidence by a foreign government should be afforded complete protection on a par with that which they enjoy in their country of origin;

and further, noting that:

- since the passage of the *Archives Act*, measures have been taken to provide for the political accountability of the Organization by the creation of the office of the Inspector-General of Intelligence and Security and the appointment of the Parliamentary Joint Committee, ASIO regards these subsequent events as disposing of the argument that the *Archives Act* should be regarded as a means of making ASIO accountable.

2.13.7 Otherwise ASIO did not wish to change the criteria for exemption contained in section 33 of the Act and is quite content with the present arrangements whereby the Intelligence Agencies hold their own records rather than transfer them to Archives.

2.13.8 Other concerns identified by ASIO were:

- that the internal reconsideration provided for by section 42 of the Act, as far as concerns ASIO, should be undertaken by the Director-General of Security or his delegate rather than the Director-General of Archives or his delegate. ASIO submitted that the present arrangement is not consistent with the statutory and political role of the Director-General of Security;

- the right of appeal from decisions of ASIO to the AAT should be abolished. A review by the Inspector-General of Intelligence and Security should be substituted. In support of this submission ASIO gave examples of 'close shaves' in the inadvertent release of confidential material while security matters were under consideration by the AAT;

- the Inspector-General of Intelligence and Security should also have the power to conduct spot checks on ASIO to ensure that it was observing the proprieties and legalities in its archiving practices;

- responding to applications for access has imposed an unreasonable burden on the staff of ASIO. Similar provisions to those in the FOI Act regarding unreasonable requests and charges should be introduced.

2.13.9 The general view in favour of the retention of the status quo was expressed by the Archives in its submission. The Archives submitted that:

- the public release of ASIO archival records has been handled by both ASIO and Australian Archives in an effective and security-conscious manner;
- adequate procedures have been developed for the identification and protection of sensitive material;
- all decisions about the application of security-related exemptions to ASIO records are made by ASIO;
- a large body of material covering a wide range of subjects has been made available for public scrutiny;
- there is no evidence that the appeal provisions of the *Archives Act* have failed to provide adequate protection for material for which ASIO has sought exemption;
- the decisions of the AAT have upheld, with very minor exceptions, the exemptions under appeal and endorsed the principles on which those exemptions were based.

CHAPTER 3

IDENTIFIED CONCERNS WITH SECURITY (INCLUDING PRIVACY IMPLICATIONS)

3.1 Intelligence Information And Material Derived from Foreign Sources

3.1.1 Australia's allies supply or exchange intelligence information which is of crucial importance to Australia's defence and security. ASIO submitted that 'most of the countries with which Australia exchanges information and all the major ones, do so on the strict condition that the information will receive protection at a level similar to that given in the originating country'.[14]

3.1.2 The Intelligence Agencies expressed concern that Australia's intelligence partners might terminate or reduce the level and quality of their cooperation should they conclude that Australia cannot provide the level of protection for their material that they consider necessary.

3.1.3 ASIO told the Committee that none of the countries with which ASIO cooperates under section 19 of the ASIO Act has document access legislation as liberal as that of Australia. In fact several have no such legislation at all. It advised the Committee that these countries had expressed concern that information they supply, which is not made publicly available by them, might be accessed in Australia under the *Archives Act* or released by direction of the AAT.[15]

3.1.4 ASIO submitted that the closed access period should be extended to

[14]ASIO submission, p.22.

[15]ASIO Submission, p.22.

50 years and that release of foreign-derived material should be further embargoed for such period as the material so supplied was precluded from access in the nation supplying it.

3.1.5 The position of ASIO on this matter was supported by the Department of Defence in a submission on behalf of the Defence Intelligence Organisation (DIO), and the Defence Signals Directorate (DSD). The Department, in answer to the Committee, stated that it was aware of no occasion on which foreign-sourced material had been inadvertently released.

3.1.6 The nature of the concern in respect of Australia's intelligence partners was expressed by one of the Department's witnesses in the following terms:

> 'The difficulty with the provisions of the *Archives Act*, as it currently stands, is that it has caused them to distrust us. They see us trying to release material that they would never release, particularly when it is their own material that they have given to us in confidence and on the basis of developing our own capability. It then becomes part of our records, and then comes up under the *Archives Act* .... But what it does is it throws the seeds of doubt in their minds. To date this has not caused a problem because there is nothing they can point to that we have done wrong. But it is sowing the doubts of distrust, and therefore next time we ask them for something, if we are dealing with the same people, there will be a question of 'will we give it to them or will we not give it to them'. The nature of intelligence relationships is that you are dealing in intangibles. If they withhold information from you, you never know it is there.'

3.1.7 The Committee received a submission from the Minister for Foreign Affairs, Senator the Hon. Gareth Evans, MP. After stating that he supported the *principle of freedom of information and access to government records*, the Minister went on to say:

> 'I must nevertheless stress that it is important that Australia maintain the confidence of its friends and allies that we can protect the assessments and intelligence materials that they pass to us in *confidence. This confidence can only be maintained as* long as we can demonstrate that we have in place the institutional and legal basis to protect material so provided. Such exchanges of in-confidence information are an essential element in the effective conduct of diplomatic relations and in the formation of foreign and defence policies. While ASIO's activities are domestic there will inevitably be some foreign material held on their files. The consequences of failure to protect this information from disclosure could include the disruption of the flow of valuable intelligence material and thus compromise our national interests.'

3.1.8 He went on to stress that there was an equal need to protect from release material from whatever source which, if publicised, would damage Australia's foreign relations or our defence and security interests. Such material would of course include Australia's intelligence assessments. The Office of National Assessments (ONA) made similar points in evidence to the Committee. In a letter to the Committee on behalf of the Department of the Prime Minister and Cabinet, the Secretary of that Department, Mr M H Codd, AC made similar submissions when he referred to:

> '... the concern expressed by some foreign government Intelligence Agencies that the Government is unable to give absolute (as opposed to qualified) assurances that information provided to Australia in confidence is protected from release. If overseas governments were reluctant to continue to provide certain sensitive intelligence information to us, then this would have serious adverse implications

for our own capabilities, and for the maintenance of productive general liaison arrangements.'

3.2 Conclusion

3.2.1 It is important that Australia's international relations and defence interests should not be imperilled by the release of material, whether deliberately or inadvertently, that has the capacity to damage those relations or interests. The question is, therefore, whether these interests are sufficiently protected under the present arrangements. Submissions to the Committee from the Intelligence Agencies expressed concern as to the effect on the activities of ASIO should the existing restrictions on the release of foreign-sourced material appear to be reduced.

3.2.2 The Committee has been told by ASIO and is satisfied that the exemptions that may be claimed by the Government under subsections 33(1)(a) and 33(1)(b) of the *Archives Act* are wide enough to comprehend all of the records likely to fall within the class of records that are the subject of this concern.[16] The Conclusive Certificate procedure ensures that the only issue that can be raised is whether there is reasonable ground for the claim. Even if the AAT finds that the grounds are not reasonable it cannot make any orders for the release of the record: the Minister may persist with the claim. Under section 45, the Minister is required to notify the applicant if he decides not to revoke the Conclusive Certificate and must table a copy of that notice in both Houses of Parliament.

3.2.3 It would appear that unwanted information has never been released. The concern is that the potential is perceived to exist and that this perception is sufficient to undermine the confidence of some supplying nations that their material is absolutely protected from disclosure. This distrust has the potential to cause the kind of adverse reaction leading to the consequences referred to by ASIO in its submission.

[16] ASIO submission, Evidence, p.

3.2.4 The Committee believes that provision should be made so that our Government can give foreign governments supplying information a more confident assurance that their material is as well protected under our arrangements as it would be under their own. It believes that this can be achieved by the adoption of ASIO's recommendation that information passed in confidence by a foreign government should be afforded complete protection on a par with that which they enjoy in their country of origin. The Committee accordingly recommends:

RECOMMENDATION 1:

That guidelines be issued by the Minister to the Intelligence Agencies requiring that foreign material received in confidence should be exempted from disclosure for such period as that material is restricted from public access in the country of origin.

RECOMMENDATION 2:

The *Archives Act* should be amended to preclude any appeal to the Administrative Appeals Tribunal from a certification by the Inspector-General of Intelligence and Security that the guidelines issued by the Minister respecting protection of foreign-derived material has been properly observed.

3.3 AGENTS, TARGETS AND METHODS OF OPERATION

3.3.1 ASIO informed the Committee that its records routinely contain details of targets, sources, liaison arrangements, methods of operation and identities of officers and agents. It submitted that all or any of this information has the potential for causing damage to the national interest if released.

3.3.2 The identity of agents, informants and officers needs to be suppressed both in the interest of the individual, personally, and in the wider interest, in that Intelligence Agencies will not be able to recruit effectively if they cannot guarantee their agents assured cover.

3.3.3 The issues at stake here include the personal safety of the operatives and the safety of their families. ASIO contends that suppression of the identity of these people needs to extend at least for their lives and in many cases beyond their lifetime.

3.3.4 It is argued that knowledge of the identity of a particular agent could give a clue to the identity of others and also to the methods of operation of the Organization. The details of how the Organization operated, which must include information concerning the kind of people recruited, can continue to have a contemporary relevance well beyond the term of the life of an individual.

3.3.5 More pertinent to the concerns of those seeking access to the records of ASIO is not so much who reported but what they reported. It is the reports themselves that are of most immediate interest. ASIO, according to its current practice, claims exemptions for the reports not merely for the identity of the reporter.

3.3.6 ASIO submitted that the release of agents' reports even with the names deleted could provide sufficient clues to identify the source. It is believed by ASIO that the technique, sometimes called the 'mosaic technique' is one whereby those seeking to penetrate the workings of an Intelligence Agency may contrive to gather seemingly innocuous pieces of information, from which they make connections, to build a picture which enables them to deduce information concerning the operatives and operations of the Agency.

3.4 Conclusion

3.4.1 ASIO's claims for exemption to protect the anonymity of its operatives and the integrity of its methods has implications of importance to this Review. It means that all records for which access is requested must undergo a painstaking examination by experienced ASIO personnel resulting in the retention of many records and the filleting of those eventually released. This has meant that

applicants, disappointed with the material supplied to them in response to their requests, have challenged the decisions both by requesting internal review and by appealing to the AAT.

3.4.2 The process of examination has been of necessity slow. This has led to complaints that ASIO/Archives are failing in their statutory obligation under subsection 40(3) to notify applicants within 90 days of the outcome of their applications. It has placed strains on the resources of ASIO because of the need for senior and experienced personnel to be involved in the process. The Committee returns to this issue in greater detail where it discusses the question of resources in Chapter 4.

3.4.3 The Committee believes that it is essential that operatives and former operatives of ASIO should be fully protected by the suppression of their identities. It concludes that the suppression of the identity of the sources, agents and operatives should be guaranteed in guidelines for a period of 30 years from the death of the agent, operative or source.

3.4.4 While it does not necessarily follow that the suppression of the identities of sources and agents should always result in the suppression of the reports and records with which they were associated, it is recognised that this is likely to be the outcome in many cases. Application of the 'mosaic theory' will ensure that ASIO will claim exemption where it concludes that the identity of the source or agent might be deduced from a report or other record to which access is sought. This exclusion of access is likely to diminish with the passage of time and changes in the circumstances of the world. However, in the short term, it is unlikely that ASIO will be able to release more material to researchers than it is currently prepared to release.

3.4.5 Nevertheless the Committee believes that this restriction on access is necessary for the morale and proper functioning of ASIO. It is imperative for the Organization to be able to assure its operatives, agents and sources that their anonymity will be respected during their lifetimes and the lifetimes of their immediate family. The Committee accordingly recommends:

RECOMMENDATION 3:

That the suppression of the identity of operatives, agents and sources, should be guaranteed in guidelines for a period of 30 years from the death of the operative, agent or source.

3.5 Privacy Consideration

3.5.1 Term of reference (b) asks the Committee to consider the implications for the privacy of the individual and his or her immediate family of the release of information. ASIO has submitted that the identities of individuals should be protected on privacy, rather than security, grounds where they are mentioned in ASIO records. If this argument were accepted it could mean that ASIO could claim exemption from release for an even larger class of records than is the case at present.

3.5.2 Under the *Archives Act*, the Archives peruses all records (not just ASIO's) to ensure that information and material of privacy concern about individuals is not released. It is the Archives, not ASIO, that has the responsibility for claiming exemptions on the grounds of infringements of personal privacy. It exercises this function under subsection 33(1)(g) of the *Archives Act*. ASIO has submitted that the present arrangements do not go far enough.

3.5.3 ASIO has referred to the concept of privacy as developed in the International Covenant on Civil and Political Rights and the Report No. 22 Privacy, of the Australian Law Reform Commission (ALRC). In that report the ALRC noted that privacy claims involve a number of aspects including the principle that:

> ... a person should be able to exert an appropriate measure of control on the extent to which his correspondence, communication and activities are available to others in the community, and he should be able to control the extent to which information about him is available to others in the community.[17]

3.5.4 Notwithstanding these principles, ASIO notes that privacy claims 'must be considered against similar, equally justified claims by other individuals ... privacy protection should not ignore other legitimate interests'.[18] In ASIO's submission 'other legitimate' interests include matters such as the national interest in intelligence and security. This is reflected in the exemptions of the Intelligence Agencies from the requirement to observe the FOI and *Privacy Act 1988* requirements that permit individuals to establish what information is held concerning them and the opportunity for them to correct the accuracy of information where it is incorrect.

3.5.5 The right to information privacy has now been enshrined as Privacy Principles 10 and 11 in Part III of the *Privacy Act*. ASIO submits that the *Archives Act* makes no provision, as the FOI Act and the Privacy Acts do, to protect the privacy interests of people mentioned in records who are not the subject of the record. In this category would fall acquaintances, colleagues, neighbours or family of the target under surveillance. There is no provision, as there is in FOI legislation, for a person to be consulted before the release of a file in which he/she is mentioned before that record is released to a third party. This has led ASIO to submit that:

> ... 30 years is too short a time to afford adequate protection for the privacy interests of individuals where those occur in security records;
>
> ... the *Archives Act* does not offer the same protection as the FOI Act which contains provisions, for example, like 'reverse FOI': a requirement that a

[17] ASIO Submission - Evidence quoting ALRC Report No. 22, paragraph 1033.

[18] ALRC Report, paragraph 1034, p.

third person mentioned in a record sought by another must be consulted as to whether that record should be released.

3.5.6 To overcome these perceived problems ASIO recommends that the closed access period be extended to 50 years; that individuals wishing to access their own files be permitted to do so under the special access provisions in section 56; any of these released as above still be subject to the exemption provisions. ASIO argues that the privacy principles applied to contemporary records should also apply to records available under the *Archives Act*.

3.5.7 In its evidence to the Committee, the Advisory Council for the Australian Archives[19] submitted that privacy is a matter covered by the terms of the Act - that is, records must be reviewed prior to release in order to identify any privacy implications. Thus, records released by ASIO (like records held by any other agency) are reviewed by Archives for their privacy implications. There should be no greater or lesser problem with ASIO records than arise with other records having possible privacy implications. The Advisory Council did not consider that the removal of ASIO records from the Archives could be justified on privacy grounds.

3.5.8 The Archives in its evidence[20] informed the Committee that decisions as to the exemption of records on privacy grounds are currently made by the Archives according to guidelines that Archives has itself developed and which apply to all Commonwealth records. The Committee was told that in general only a small quantity of material is exempted from ASIO records purely on personal privacy grounds. This is because much of the information gathered by ASIO relates to the participation of individuals in political, industrial or cultural activities rather than to their personal affairs.[21]

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[19]Evidence, p.85.

[20]Evidence, p.69 and Evidence, pp.523-27.

[21]Ibid.

3.5.9 Where material does relate to the private lives of individuals under surveillance and it had been obtained by clandestine means, it is consequently exempt under these guidelines. No individual has complained to Archives that his/her privacy has been infringed by the release of an ASIO file.[22]

3.5.10 Dr Gregory Pemberton[23], an historian, submitted to the Committee that ASIO's recent concern with the privacy implications of making its archives available seems a little belated, ironic and, perhaps, even a little hypocritical and self-serving. Most government agencies in Australia make available such personal information through the Archives.[24] Dr Pemberton felt that as records of the Government rather than of the individual, the Government has a duty to make them available. Most persons with an ASIO file are willing to make it available. If there is to be personal protection of people's privacy then it should be left for determination by the Archives and the individual rather than ASIO.

3.5.11 The Privacy Commissioner, Mr Kevin O'Connor,[25] in his submission to the Inquiry, disagreed with ASIO's suggestion that similar privacy considerations should apply under the *Archives Act* as under the FOI and Privacy Acts. He submitted to the Committee that personal information held by ASIO should not be exempt from the open access provisions of the *Archives Act* because to do so would remove the sole mechanism currently enabling public scrutiny of ASIO's information-handling practices. He perceived the right of an individual who had been subject to ASIO surveillance to seek access to his/her own file as a privacy right in itself. He told the Committee:

> 'The common link between the Privacy Act, the FOI Act and the *Archives Act* is their emphasis of the principle of openness and accountability of

[22]Evidence, pp.523-27.

[23]Evidence, p.31.

[24]Evidence, p. 46

[25]Evidence, pp. 157-98.

> Government. I believe there is a reasonable level of community acceptance of the need to sacrifice some degree of openness in matters of national security, but the need for secrecy is more difficult to justify as time passes. As matters currently stand the sole legal avenue for people to find out what files have been held about them by ASIO only arises 30 years after the material has been collected by ASIO. The right of access is a very important privacy right. I would not like to see that right, as it arises under the *Archives Act*, lost. Moreover, many items of information inevitably lose their relevance and hence their sensitivity as time passes, and as this occurs, it is appropriate that there be a 'reinstatement' of the openness in accordance with the principles governing public sector information handling.'

3.5.12 Mr O'Connor told the Committee that he was encouraged by the procedures adhered to by the Archives in assessing requests for access to documents in the open access period, an approach which he understood has seen a virtual absence of complaints. (He was referring to the scrutiny of files on privacy grounds.) He stated it as his belief that the existing statutory exemptions from access to information in the open access period provide sufficient safeguards against inappropriate disclosures for most classes of personal information.

3.6 Conclusion

3.6.1 The *Archives Act* makes Archives the authority responsible for claiming exemptions to protect the personal privacy of individuals, generally. The Archives was able to satisfy the Committee that the criteria that it applied to exempt, on grounds of privacy, records from public access, were adequate to meet any concern that unwelcome personal details about individuals might be released.

3.6.2 Archives supplied the Committee with the manuals that it employs when examining all records for which access is sought. Information about such matters as sexual activities and sexual preferences of individuals, alcoholism, psychiatric conditions or criminal records would be automatically exempted from

access. Where such information has been obtained by surveillance it is automatically exempt under the criteria now applied.

3.6.3 It is also noteworthy that the kind of information likely to be of concern is most likely to be contained in agents' reports for which the Organization will probably claim exemption on other grounds.

3.6.4 The Committee does not see any grounds for extending the role of ASIO to permit it to claim exemptions to protect the privacy of individuals mentioned in its records. Similarly, it is not in favour of ASIO claiming exemption on the general ground of privacy. ASIO's role should be restricted to claiming exemptions on security-related grounds. The Committee accordingly recommends:

RECOMMENDATION 4:

That there should be no provision made to enable ASIO to exclude records from public access on the grounds of privacy unrelated to security.

CHAPTER 4

THE OPTIONS AVAILABLE TO OVERCOME CONCERNS IDENTIFIED DURING THE REVIEW

4.1 Adopting the RCASIA Proposal

4.1.1 It will be recalled that the RCASIA recommended that consideration be given to amending the ASIO Act:

> to remove ASIO's operational records from the requirement to hand records over to the Archives after 30 years and from the application of the 30 year rule in regard to public access (I see no reason why its administrative records should be protected), while allowing the Director-General a discretion to hand over to the Archives for public access, records 30 or more years old, where he considers that this can be done consistently with the interests of security and personal privacy.[26]

4.1.2 Implementation of the proposal would make ASIO self-regulating and able to determine the extent to which it chose to be bound by the access provisions of the *Archives Act*. Under this proposal the citizen would have no right of access to a record once it was characterised by the Director-General as an operational record. Theoretically a right to access would extend to 'administrative records'. But there is no mechanism proposed to supervise the discretion of the Director-General of Security in his/her determination of that question.

4.1.3 Under the RCASIA proposal the determination of whether a record would be accessible, whether operational or otherwise, would be entirely within the unsupervised discretion of the Director-General of Security.

4.1.4 There would be no time limit at all involved in this proposal and no guarantee that ASIO records would be eventually conserved and preserved. Professional archivists find this objectionable. Mr Hurley, the Keeper of Public Records (Victoria) in a submission stated:

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[26]RCASIA Report, p.157

> Most archivists and researchers you approach will say that there should be no absolute exemption of any agency from the Archives law - especially in relation to custody and disposal - and I need only repeat that. Whatever difficulties there may be in applying the law to security records within the current time periods, there will clearly come a time where those difficulties will cease.[27]

4.1.5 Mr Cross, the Principal Archivist NSW, in a submission on behalf of the Archives Authority of New South Wales stated:

> the Archives Authority considers that the Australian Archives makes a reasonable attempt at balancing the interests of record creators with those of future researchers. It may be that the 30 year access restriction is too short for some of ASIO's records and that a longer, perhaps much longer, restriction is needed. In this event the balance can be shifted. However, it should not be destroyed: the existing access restriction may be extended but it should not be made indefinite nor should the obligation to provide access be written out of the *Archives Act* altogether, even if the result is a restricted access period of 50 - 100 years.[28]

4.1.6 The Archives Authority of New South Wales expressed concern that Intelligence Agencies might be placed outside the *Archives Act* and added:

> ... the Archives Authority wishes to record its firm conviction that the *Archives Act* should not be amended to permit ASIO to dispose of its records without first obtaining the approval of Australian Archives, which must be guaranteed some access to those records albeit delayed and limited access, in order to ensure that its decisions on retention and disposal are informed ones.[29]

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[27]Evidence, p.183

[28]Evidence, p.242

[29]Evidence, p.243

4.1.7 The RCASIA proposal does not provide for the ultimate release of ASIO records or their proper archival preservation. ASIO records would be outside the system and subject to no archival controls.

4.1.8 As a key agency of the Government it is important that ASIO should, ultimately, be accountable for its actions to the Australian community. In evidence to the Review on behalf of Melbourne University, Professor S F Macintyre, submitted:

> Clearly within our Westminster system ASIO has ultimate accountability to a Minister and to the Executive, but the operation of the Organization is far less accountable on its day-to-day operations than are other arms of government.
>
> The argument of our submission is that it means that for public confidence in an organisation, ultimately accountability is through historical accountability. The ability of historians to get in and look at what the organization was doing is an important safeguard in that organization.[30]
>
> Our argument is that an important element in a society which we think would help ensure civil liberties should be a mechanism of accountability for the scrutiny of the performance of that organization by historians at an appropriate interval.[31]

4.1.9 In a submission to the Review, Mr Mark Brogan suggested that the conclusions of the RCASIA were based on imperfect analysis even of the submissions available to it at the time. He argued that, although evidence was put to the RCASIA which suggested the undesirability of such blanket exemptions, it was entirely disregarded in the printed final report. In addition there was no discussion of issues

[30]Evidence, p.366

[31]Ibid, p.367

raised in the Wilson Committee[32] in the United Kingdom, which at the time represented the most substantial investigation of the issue of public access to non-current security records. Mr Brogan suggests that the RCASIA possibly regarded this area as peripheral to the investigation.[33]

4.1.10 It is conceded by ASIO that the RCASIA proposals go further than is required to meet its concerns; however, the Committee believes it important to place on record its conviction that ASIO's records, whether operational or administrative, should only be culled and destroyed in accordance with best archival practices and under the supervision and with the approval of the Archives. It should be acknowledged that ultimately all ASIO records of significance will become available for public access.

4.2 Extending the Closed Access Period

4.2.1 The closed access period for Commonwealth records is, at present, 30 years from the end of the year that the record came into existence. ASIO has suggested that a closed access period of 50 years from the creation of the document should apply for the records of ASIO and the other Intelligence Agencies. At the end of the 50-year period access would be available to records under the present provisions of the Act - that is, access could still be refused under section 33. In ASIO's formulation there would be no appeal to the AAT, even after 50 years.

4.2.2 ASIO has not elected in its submissions to explain why the period of 50 years should have been selected in preference to other possible periods. Its case rests on the importance it attaches to the protection of foreign intelligence reports, and ASIO's sources, targets and method of operation.

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[32]In Modern Public Records: Selection and Access:
Report of a Committee appointed by the Lord Chancellor-CMD, 8204, 1981

[33]Evidence, p.383

4.2.3 The Committee has acknowledged the various concerns of the Intelligence Agencies in Chapter 3. It has concluded that these concerns can be met by means other than the blanket extension of the closed access period.

4.2.4 The Committee is reluctant to support a reduction of access to Commonwealth records. The agencies have not been able to point to an incident where Australia's interests have been threatened by a release or near release of information. The Committee accepts the evidence of the Director-General of the Archives, Mr Nichols. He said:

> The Act has now been in operation for 7 years. That is, we have had 7 years of experience in the management of all aspects of the Act and have developed practices and processes for that purpose. In the 7 year period that ASIO records have been subject to the access provisions of the Act more than 1,600 files have been wholly or partially released for public access. We are not aware that this release has caused any significant security problems or, any security problems let me say. In other words, the exemption and appeal provisions of the Act have worked in the way they were intended.[34]

4.3 Conclusion

4.3.1 The Committee believes that proposals contained in Recommendations 1, 2 and 3 will afford additional protection for material identified as particularly sensitive and concludes that a blanket extension of the closed access period is unnecessary and undesirable. The Committee accordingly recommends:

RECOMMENDATION 5

That ASIO records continue to be subject to the access provisions of the *Archives Act*. The open access period in respect of ASIO records should continue to be 30 years from the creation of the record. ASIO should continue to be obliged to make records in the open access period available save where the record is an exempt record under section 33 of the *Archives Act*.

[34]Evidence, p.524

4.4 Review by the Administrative Appeals Tribunal

4.4.1 ASIO's objection to the jurisdiction of the AAT rests on the propositions that decisions of the Director-General of Security, on security-related matters, ought not to be subject to reversal even by a court; that there is a danger that sensitive records might be inadvertently released in the course of proceedings; and that the cost in terms of money and resources in defending matters before the AAT are unjustifiably high.

4.4.2 The Committee heard evidence of the release and near release of sensitive records during proceedings before the AAT. It is not possible, on the basis of the information available, for the Committee to assess the level of risk to the national interest involved in these incidents. The Committee must accept the advice that the risk was significant. However, it believes that it is possible to devise administrative procedures to eliminate this risk and that the possibility can be considerably reduced by adopting measures to provide more satisfactory service to applicants as proposed in Recommendations 10 to 13.

4.4.3 ASIO argues[35] that the ASIO Act makes the Director-General of Security the principal adviser to the Government on all matters pertaining to the Organization's functions which include the collection and communication of information relevant to security. ASIO also believes that the release of its records pursuant to the *Archives Act* is a communication of intelligence as covered by the ASIO Act and that accordingly, the ultimate authority for such a release should be the Director-General of Security.

4.4.4 While the AAT can certainly substitute its own decision for that of the Director-General of Archives, this can only happen where the record for which exemption is claimed is unprotected by a Minister's Conclusive Certificate. Where

[35]Evidence, p.131

a Conclusive Certificate is in force then the powers of the AAT are restricted by section 45.

4.4.5 The Committee received a submission from the Australian Institute of Administrative Law[36] and heard evidence in support of it from Mr R K Todd, a Deputy President of the AAT.[37]

4.4.6 Mr Todd had presided on a number of occasions when the AAT had before it matters arising under the *Archives Act* and the FOI Act. The point that he particularly wished to make to the Committee was the difference between cases where the claim for exemption was protected by a Minister's Conclusive Certificate and what he described as a 'bald claim for exemption'. He cited decisions of the AAT[38] as authorities for the proposition that, when confronted by a Conclusive Certificate, the AAT can exercise only a supervisory jurisdiction, asking itself not whether it considers a document exempt, but whether reasonable grounds exist for such a claim. There is thus no question of the AAT substituting its opinion for that of the Government. As noted earlier section 45 of the *Archives Act* ensures that the Minister, even when faced with an adverse decision on these limited grounds, is not bound to release a record but merely to review his decision regarding it.

4.4.7 Mr Todd was satisfied that the AAT had established effective procedures for dealing with applications in respect of which a Conclusive Certificate had been filed. In the case of what he described as a 'bald application' for exemption he affirmed the possibility that the AAT could reach a decision different from that of the Government. However, in the case of matters such as the international relations of the Commonwealth or secret material supplied by an ally it could be expected that a Conclusive Certificate would be in force. The Committee

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[36]Evidence, p. S32

[37]Evidence pp. 19-30

[38]In Re Slater and Cox(1988) 8AAR 403Re: Throssell and the Australian Archives (1986) 10 AGD 403, and Re Throssell and the Australian Archives [No. 2] A86/15

also noted that the pattern of decisions so far indicated that the AAT would uphold claims for exemption made by ASIO. The AAT had accepted arguments based on the mosaic theory.[39] Mr Todd, ASIO and the Archives have all stressed that AAT proceedings, though few in number, are expensive of time and resources.

4.4.8 ASIO proposed that the right of appeal to the AAT should be replaced by a right of administrative review by the Inspector-General of Intelligence and Security (IGIS). It follows that the decision of the IGIS would be final and unappealable. Such an arrangement would exclude judicial review.

4.5 CONCLUSION

4.5.1 A citizen is entitled to be assured that the Director-General of Security, in exercising the power to refuse a statutory right to access conferred by the *Archives Act*, has done so on valid grounds. It is appropriate for a court to determine such a question. The Committee does not believe that the determination of the question of legal right should be removed from the purview of the court and conferred on another official. If the IGIS is to have a role, it should be at the internal reconsideration stage, while the matters under consideration are still in the administrative sphere.

4.5.2 The Committee also has reservations about whether additional responsibilities in a general field of Commonwealth administration are appropriate having regard to the role and functions of the IGIS. In recommending the creation of the office, the RCASIA stressed that the office should not encompass 'executive responsibilities' and that care needed to be taken to ensure that the lines of responsibility from the Director-General of Security to the Attorney-General, and through him to Parliament, in regard to decisions on domestic security, were safeguarded:

[39]Slater and Cox (supra).

> The creation of a new position with the power to second guess or to take over managerial or administrative decisions would confuse the issue of responsibility and could lead to 'buck passing' among those concerned.[40]

4.5.3 The RCASIA concluded that there should be an independent person with power to maintain a close scrutiny of ASIO's performance of its functions and to look into complaints, in order to give greater assurance to the Attorney-General, and through him to the Parliament and the public, that ASIO is acting with propriety and within its charter. The IGIS, in his evidence, commented that his office could handle the role of reviewing access decisions if required to:

> The matter [a role for the IGIS in the Review of Access requests] was something that government considered when it set up my office about four or five years ago. But the Government decided against it at the time. There is a certain logic in doing this. I act on behalf of, for example, the Human Rights Commission and the Privacy Commissioner, in respect of all of the intelligence and security agencies. If there were a complaint under the Human Rights Act against, say, ASIO, it would simply be passed directly to me by the Human Rights Commission, and I would act on the Commission's behalf.[41]

4.6 The IGIS already has the power to examine grievances and has in fact complaints under consideration concerning the delays by ASIO in complying with requests under the *Archives Act*. If the IGIS had formalised powers of the type proposed it might detract from his flexibility to perform the broad role he is required to play under the legislation. He told the ComMittee that he would require additional resources to perform such a role.[42]

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[40]RCASIA Report paras 16.82 to 16.84, p.330

[41]Evidence, p.147.

[42]Evidence, p.147.

4.6.1 The Committee believes that it would not be appropriate to replace a system of judicial review with an arrangement for unsupervised administrative review. It is appropriate for the IGIS to have the role of reviewing decisions of the Director-General of Security to refuse access to records, subject to review by the AAT.

4.6.2 However, in the case of foreign material received in confidence the Committee does not believe that there should be an appeal to the AAT once the IGIS has certified that an exemption in respect of that material has been properly claimed under the guidelines referred to in Recommendation 1.

4.6.3 The purpose of the Committee's Recommendation 1 is to ensure that the Australian government can confidently assure its intelligence partners that material supplied in confidence to the Australian Government is as safe under our laws as it would be under their own. The assurance is necessary to ensure that cooperation will continue at a high level of trust.

4.6.4 The Committee believes that this assurance will be stronger if there is no appeal beyond the certification of the IGIS that in making the claim for exemption the guidelines have been observed. It is pertinent to add that, in any event, appeal from the IGIS to the AAT would have been limited to the supervisory jurisdiction described by Mr Todd in his evidence to the Committee.

4.6.5 The Committee has explained the power to issue Conclusive Certificates in Chapter 2, and has reported the evidence of Mr Todd of the AAT regarding the approach adopted by the AAT where such certificates are in force (see paras 4.4.5 tO 4.4.7). The Committee believes that there would be less need for the Government to apply such certificates if the procedure it has proposed in Recommendation 1 for ensuring the protection of material supplied in confidence by foreign intelligence partners is adopted. This would mean that such material would not be reviewable in the AAT. The Committee concludes that where such certificates

are in force the need for them should be regularly reviewed. The certificates should contain 'a sunset clause' so that the certificate would be deemed to lapse after the passage of three years from application of the certificate.

4.7 Internal Reconsideration

4.7.1 ASIO has objected to the present provisions of the *Archives Act* which make the Director-General of Archives rather than the Director-General of Security responsible for determining applications for internal reconsideration.

4.7.2 The Committee has concluded that as long as questions of security are at issue the appropriate officer to make a decision on release of security material is the Director-General of Security. The Act should be amended to achieve this outcome.

4.7.3 The Committee has also concluded that if there is to be role for the IGIS it should be at the reconsideration stage. This would appear to be in keeping with his statutory role and would be appropriate if, as is suggested, the decision under review is that of the Director-General of Security. The IGIS's decision would be subject to review in the AAT. The Committee has noted that ASIO in its evidence suggested that the IGIS should conduct regular spot checks on the Organization to ensure that it is observing its obligations under the *Archives Act*. The Committee believes this is important and that the IGIS should regularly undertake spot checks. It notes that under subparagraph 8(1)(a)(ii) of the *Inspector-General of Intelligence and Security Act 1986*, the IGIS can monitor the compliance by ASIO of guidelines given to ASIO by the responsible Minister. It believes that the Minister should issue such guidelines to facilitate regular monitoring by the IGIS of ASIO compliance.

RECOMMENDATION 6

That Conclusive Certificates issued under the *Archives Act* should be subject to a 'sunset clause'. Section 34 of the Act should be amended to specify that a Conclusive Certificate issued by the Minister under the provision shall lapse after three years from the day it came into effect.

RECOMMENDATION 7

That subsection 42(3) of the *Archives Act* relating to internal reconsideration of decisions should be amended to make it clear that the proper officer to make the decision on an application regarding access to records of ASIO should be the Director-General of Security.

RECOMMENDATION 8

That an applicant for an internal reconsideration dissatisfied with the decision of the Director-General of Security should be entitled to have that decision reviewed by the Inspector-General of Intelligence and Security who should report his findings to the Minister who should determine the matter.

RECOMMENDATION 9

There should be a right of appeal to the Administrative Appeals Tribunal from the decision of the Minister except in the circumstances referred to in Recommendation 2 above.

4.8 Management of Requests for Access

4.8.1 ASIO submits that it is obliged to divert considerable resources to respond to access requests. To illustrate this, ASIO stated that the requests received over the first half of the 1990-91 financial year alone were expected to involve 29-person years of effort which, under the *Archives Act*, ASIO is expected to provide free and within 90 days. ASIO provided the Committee with statistical information concerning the resources required to process requests within 90 days. This is reproduced at Appendix D of this Report.

4.8.2 ASIO estimates that the direct salary cost to ASIO of providing access exceeds $100 000 pa. This amount does not include the proportion of management salaries or the relevant parts of the salaries of information management personnel involved in the location, retrieval, administration and recording of such requests.

4.8.3 A partial solution to this problem in ASIO's submission is to adopt the provision of the FOI Act that permits an agency to refuse a request for information where the work involved in providing access 'would interfere substantially and unreasonably divert the resources of the agency from its other operations'. This is made subject to the applicant being granted a 'reasonable opportunity for consultation with a view to making the request in a form that would remove the ground for refusal'.

4.8.4 Such a provision would, in ASIO's view, enable the Organization to negotiate omnibus and encyclopaedic requests into manageable size and would reduce the impact of large requests made with a possible nuisance effect.

4.8.5 The Archives in its submission stated that the operations of the internal review process have imposed a substantial burden on both ASIO and itself. The Archives recommended that there be introduced an application fee for internal reconsideration of applications under the *Archives Act*. The fee could be set at the same level as that under the FOI Act, which is currently $40. However, Archives was opposed to the introduction of fees for initial consideration.

4.8.6 Evidence was also given to the Committee by individual researchers who had various complaints about the service received from ASIO. The complaints included:

- ASIO does not provide file indices. This means that the researcher is forced to 'trawl' - that is, submit exhaustive lists in the hope of picking up subjects of ASIO interest;
- ASIO is not complying with requests in the required time. Nor is it as cooperative as other Departments required to provide access to intelligence/security records;
- the files are subject to massive culling. It was alleged that ASIO was taking the easy way out by mass deletions rather than careful and responsible protection of sensitive information.

4.8.7 The Director-General of Archives, Mr Nichols, identified the problem brought to light by ASIO as being a problem of management rather than one of protecting security per se.

> 'I do not think that the decision making as to what is and what is not exempt is the problem ... I do not think for instance that ASIO has asserted in its submission or produced any evidence to show that there is a problem in this area. It seems to be more of a problem of administration and process rather than a threat to security.'[43]

4.8.8 Currently, requests for access that are causing the backlog are two very large requests. One is from Dr Pemberton, an historian who is researching a biography of the diplomat and scholar Dr John Burton.[44] Dr Pemberton told the Committee that because of ASIO's refusal to provide indices and finding aids, he has been placed in the position of having to specify exactly the records that he wants. To compensate for the lack of cooperation and guidance, Dr Pemberton has adopted the strategy of trawling. He has made an omnibus request to ASIO for all records of staff and students at the ANU[45] in 1954. A list of requests made by Dr Pemberton is included at Appendix D of this Report. The other large request is that of Mr David McKnight, a journalist, who is writing a book about ASIO in the post-war period.[46]

4.8.9 ASIO has complained that it does not have sufficient resources to deal with the current requests and has had to divert highly skilled staff from important work to respond to access requests. However, it appears that other Commonwealth agencies such as the Department of Defence and Department of

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[43]Evidence, p.530.

[44]Evidence, p.31-47

[45]Dr Pemberton stressed that the ANU at the time was a postgraduate institution of some 205 people only. The undergraduate institution was then called the Canberra Community College.

[46]Evidence, p.278

Foreign Affairs and Trade, confronted with requests for access to records of equal sensitivity, do manage to respond within the 90-day limit. These agencies have put on extra staff to cope with peaks and backlogs, often hiring retired personnel on contract. This had been effective in overcoming the problem.

4.8.10 ASIO has also submitted that it should be able to resist what it describes as frivolous and vexatious requests. ASIO has suggested that there should be a provision in the *Archives Act* like section 24(1) of the FOI Act (similar provisions are contained in the Ombudsman Act and the Inspector-General of Intelligence and Security Act) providing that an agency may refuse a request when the work involved:

> '... would interfere substantially and unreasonably divert the resources of the agency from its other operations.'

4.8.11 This is subject to subsection 24(3)(b) of the Act which makes any such refusal subject to 'a reasonable opportunity for consultation with a view to ... making ... the request in a form that would remove the ground for refusal.' In the *Ombudsman Act there is a provision which permits the Ombudsman not to* investigate a request that he considers is 'frivolous, vexatious or not made in good faith.' A similar provision is also found in the Inspector-General of Intelligence and Security Act.

4.8.12 It is pertinent to note the observation of the Keeper of Public Records in Victoria, in his submission:

> 'Perhaps part of the workload problem identified by ASIO arises from the fact that the Commonwealth authorities appear to have been unable to introduce procedures for access release which follow the general intention of the release provisions of the *Archives Act. Reading ASIO's 1987-88 Report, it seems that*

public access is administered as if it were FOI.[47]'

4.8.13 He then went on to point out that the scheme of public access established under the *Archives Act* differs from FOI. Under FOI:

> '... release or non-release is considered only after a request is received. Under the *Archives Act*, it is intended that records should be examined in their totality as they approach the 30 year deadline, that decisions should have been made in advance of any request being received, that open records would have been released and readily available when a request was received and that closure would have been decided upon by that time.'

4.8.14 A consequence of ASIO not being subject to the provisions of the *Archives Act* requiring transfer of records to Archives is that much access work is done after requests are received. ASIO treats the requests like FOI requests are treated by Commonwealth agencies. This led Mr Hurley to comment:

> 'It is hardly surprising that an agency which appears to transfer very little, which is likely to close a lot, and which appears to have made little or no attempt to comply with general release procedure envisaged by the Act should be encountering the same kind of workload difficulties, as it would if it had been subject to FOI' (p.184).

The distinction made by Mr Hurley between the function of the *Archives Act* and those of the FOI Act is instructive as it does appear that the process of managing requests for records in the open access period is qualitatively different for the Intelligence Agencies than it is for the majority of Commonwealth instrumentalities.

4.8.15 Researchers have submitted that finding guides and indices should be made available by ASIO. The Committee has been told by ASIO that it is not possible for security reasons to make those available in their present form. The IGIS

[47]Evidence, p.184

has confirmed this. The Committee was told[48] that other Departments with which researchers deal when they are seeking classified records - the Department of Defence and DFAT - have special archivists and historians which, according to Dr Pemberton, means an attitudinal difference. He said that ASIO's clearers were actual security officers - intelligence officers on a routine posting. This means that the researchers cannot meet these clearers even to discuss technical matters. Dr Pemberton submitted that it would be helpful if ASIO appointed someone at Archives actually able to be known to and able to negotiate with scholars about their requests.

4.8.16 The Committee asked ASIO if it would improve matters if ASIO developed different procedures for dealing with limited requests, such as a request from an individual to access his/her own file, which could be fast tracked, while more complicated requests could be negotiated with the applicant both as to timing and to scale. ASIO was of the view that to be fair to applicants it should treat all requests strictly chronologically. The only exceptions should be cases where no ASIO record exists, when the applicant should be informed of the fact immediately. It supported its case by saying that this was the practice adopted by the Federal Bureau of Investigation in the United States of America.

Conclusion

4.8.17 The Committee concludes that compliance with the access provisions of the *Archives Act* does present special problems for ASIO. The Committee accepts that the obligation to comply has imposed a heavy administrative burden on ASIO. As argued in this report however, the Committee believes that the answer to these difficulties should be sought otherwise than by simply extending the closed access period to 50 years.

4.8.18 The evidence of ASIO, confirmed by the evidence of the IGIS has

[48]Evidence, p.42

satisfied the Committee that the process applied by ASIO of careful scrutiny of each record by experienced ASIO intelligence officers is justified on grounds of national security. This means that ASIO in responding to requests, is required to operate in a more labour-intensive way than other agencies required to comply with the *Archives Act*. This needs to be recognised by the government in allocating resources to enable the agency to discharge its statutory obligations.

4.8.19 There should be an Archival Unit within ASIO to undertake consultation and negotiation with researchers, particularly those with major projects. The Unit needs to be accessible to the public and this means that it needs to be headed by a person who can be known to the public. The ASIO Act currently requires the anonymity of ASIO personnel other than the Director-General of Security. The Committee notes that Mr Justice Hope in the RCASIA observed that the need for all of ASIO's personnel to be anonymous was dubious.[49]

4.8.20 The Committee does not, however, believe that FOI-type provisions should be inserted in the *Archives Act*, even though ASIO in complying with requests is required to operate as if it were complying with the FOI Act. The principle of the *Archives Act* that citizens have a right to records in the open access period unless the record is exempted should not be qualified by the insertion of provisions from the FOI Act, such as the right to refuse requests that 'unreasonably divert the resources of the agency'. However, the Committee is not opposed to the introduction of fees chargeable at the internal reconsideration stage.

4.8.21 There should be the opportunity for researchers with substantial requests to negotiate with ASIO. To facilitate this process there needs to be a system that distinguishes between requests in terms of their complexity. One-off requests can be fast tracked while more substantial requests should be the subject of negotiation. There also needs to be the possibility of providing ASIO with some relief from the 90-day rule in the case of such substantial requests.

[49]RCASIA Report, p.348

4.8.22 The Committee accepts the evidence of ASIO, confirmed by the IGIS, that for security reasons, ASIO file indices cannot be released. It should, however, be possible for the Unit to develop finding aids that are capable of release to the public. Similarly the Unit should be concerned with preparing material for release in advance of the records coming into the open access period.

4.8.23 The Committee also concludes that to facilitate the role envisaged for the IGIS in reviewing decisions of the Director-General of Security, the Unit should develop manuals that can be issued as guidelines under section 8A of the ASIO Act prescribing the procedures that should be followed by ASIO in claiming exemptions. This would be a point of reference for the IGIS in conducting spot checks and in exercising the jurisdiction that the Committee envisages for him. Accordingly the Committee recommends:

RECOMMENDATION 10

That the Government ensure that ASIO is provided with the necessary resources to enable it to discharge its statutory obligations under the *Archives Act*.

RECOMMENDATION 11

That ASIO establish a special Archives Unit within the Organization to manage requests for access to ASIO records in the open access period. The Unit should:

> **be headed by a senior intelligence officer qualified as an historian/archivist whose identity should be capable of being known to the public and who should be authorised by ASIO to negotiate with researchers on behalf of the agency;**
>
> **develop indices and finding aids that can be made available to the public without infringing national security;**
>
> **devote some resources to preparing records, in advance, for release as they fall into the open access period.**

RECOMMENDATION 12

That guidelines be developed under section 8A of the ASIO Act to facilitate spot checks by the Inspector-General of Intelligence and Security and reviews of complaints as envisaged by the Committee in Recommendation 8.

RECOMMENDATION 13

That the proposed Archives Unit adopt a procedure that would categorise requests according to the following criteria:

> **fast track: where the request is small in resource terms, e.g., individuals requesting their own file or that of a family member. These requests should be met within the 90-day statutory deadline;**
>
> **bulk access: for those requests of a more complicated nature where access to material over a broad spectrum is desired. The researcher should be able to negotiate with ASIO both in regard to the scale of the request and the time in which it can be provided.**

4.9 Incidental Matters

4.9.1 Other matters have been raised with the Committee in the course of the Review that are incidental to the terms of reference.

4.9.2 Reduction of the closed Access Period

4.9.3 Some submissions to the Review proposed that the closed access period should actually be reduced from 30 years to 20 years. The Committee asked the Advisory Council for the Australian Archives for an opinion on this proposal. In a considered reply the Advisory Council advised the Committee that it was generally favourable to the idea but there would be considerable resource implications in bringing in the change. The Committee did not consider it necessary to reach a conclusion on the matter for the purposes of the present Review.

4.9.4 Australian Federal Police

4.9.5 The Australian Federal Police (AFP) made a submission to the Committee that the AFP should be an agency prescribed under subsection 29(8) of the *Archives Act* as an agency not required to lodge its files with Archives under sections 27 and 28 of the *Archives Act*. In short, it wanted to be in the same position

as the Intelligence Agencies who are permitted to retain control over their own archives and not hand them over to Archives at the 25-year mark. The Committee could not regard this as within its terms of reference. This is a matter that should be left for the consideration of an Inquiry with a wider mandate to review the operation of the *Archives Act*.

4.9.6 Access and Correction Rights

4.9.7 The Committee raised with the Privacy Commissioner the concern that many have expressed - that an individual, the subject of an ASIO dossier, has no access and correction rights to ensure that information on an ASIO record concerning him/her is accurate. This right is available to citizens under the FOI and Privacy Acts in respect of the records of many agencies. However, ASIO and the other Intelligence Agencies are exempt from the operations of the FOI Act and the Privacy Act.

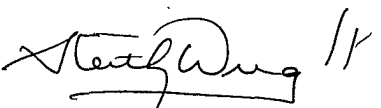
4.9.8 The matter was also raised in the RCASIA. The Privacy Commissioner was not, however, persuaded that there should be a statutory right for any Australian to discover whether he or she is the subject of an ASIO file nor was he persuaded that the FOI Act and the Privacy Acts should be extended to ASIO.

4.9.9 The Privacy Commissioner indicated some sympathy for a more extensive right of access and correction for individuals the subject of security files. He informed the Committee of the situation in Canada where his counterpart, the Canadian Privacy Commissioner, was able, subject to various restrictions, to make inquiries on behalf of individuals who believed they were under surveillance. In Canada, access and correction is not an absolute right and, particularly, is not available to an individual to ascertain whether a dossier is held on him/her by the Canadian Security Intelligence Service (CSIS). The Australian Privacy Commissioner agreed that this was appropriate.

4.9.10 The Committee considers that if an individual believes that an intelligence agency may have information concerning him/her which is inaccurate, that individual should be able to bring that concern to the attention of the agency without the agency having to confirm or deny that it holds a dossier on that person. This could be achieved by affording an opportunity to individuals to approach the IGIS who can record the information without committing the person an obligation to bring it to the attention of the authorities to whom it may be relevant. Accordingly the Committee recommends:

RECOMMENDATION 14

That in relation to current intelligence records, a person who wishes to ensure that information concerning himself/herself is accurate, may bring that information to the attention of the Inspector-General of Intelligence and Security who will bring it to the attention of the responsible Intelligence Agency for appropriate action.



Keith Wright, MP
Presiding Member

April 1992

APPENDIX A

SUBMISSIONS

The Committee has authorised for publication submissions received from the following individuals and organisations.

Mr J Goldring
Commissioner
The Law Reform Commission of Australia
Sydney NSW

Mr J Goldring
Cremorne NSW

Mr D Faber
Wayville SA

Department of the Prime Minister and Cabinet
Canberra ACT

Dr M E Bevege
Bexley NSW

* Dr F M Cain
Department of History
University of New South Wales
Australian Defence Force Academy
Campbell ACT

Mr M Bosworth
Perth WA

* Mr L Aarons
Maianbar NSW

* The Advisory Council on Australian Archives
Department of Administrative Services
Canberra ACT

* Australian Society for the Study of
Labour History - Sydney Branch
Lane Cove NSW

Afloat Press
Maleny QLD

Government of Western Australia
St George's Terrace
Perth WA

* Keeper of Public Records
Public Records Office
Melbourne VIC

* Mr M P Brogan
Kensington WA

* The Executive of the Australian Historical Association
University of Queensland
St Lucia QLD

* Public Record Office of South Australia
North Adelaide SA

* Ms A Johnson
Chatswood NSW

* Australian Council of Archives
Dickson ACT

* Attorney-General's Department
Canberra ACT

* Australian Security Intelligence Organization
Canberra ACT

Griffith University
Brisbane QLD

Mr G Slater
Canberra ACT

Australian Society of Archivists Inc
O'Connor ACT

* University of Western Sydney
Werrington NSW

* Archives Authority of New South Wales
Sydney NSW

* Mr J Waterford
Canberra Times
Fyshwick ACT

* The University of Melbourne
Parkville VIC

* Mr D McKnight
Sydney Morning Herald
Broadway
Sydney NSW

Deakin University
Geelong VIC

Senator the Hon. G Evans, QC
Minister for Foreign Affairs and Trade
Canberra ACT

* Australian Institute of Administrative Law
Canberra ACT

* Mr L W Maher
Law School
The University of Melbourne
Parkville VIC

Mr R Van Wegen
Ashfield NSW

* Royal Historical Society of Victoria
Melbourne VIC

Mr R Hibberd
Bexley South NSW

* Professor P O'Farrell
Longueville NSW

Mr E Vickery
Department of Defence
Canberra ACT

Church of Scientology
Melbourne VIC

* Law Institute of Victoria
Melbourne VIC

* Ms J Coxsedge, MP
Parliament House
Melbourne VIC

* The Government of Queensland
Brisbane QLD

The Federation of Australian Historical Societies
Canberra ACT

Mr K Buckley
Henley NSW

Mr J Ritchie
Australian Dictionary of Biography
Canberra ACT

Division of Historical Studies
Research School of Social Science
Australian National University
Canberra ACT

APPENDIX B

PUBLIC HEARINGS OF EVIDENCE

CANBERRA: 11 October 1990

Attorney-General's Department
- Mr Norman Stephen Reaburn, Deputy Secretary
- Mr Michael Willcock, Acting Assistant Secretary, National Security Branch

Australian Institute of Administrative Law
- Mr Robert Kellar Todd, Vice-President

Private Citizen
- Dr Gregory Pemberton, Ainslie, ACT

CANBERRA, 15 October 1990

Australian Archives
- Mr George Ernest Nichols, Director-General
- Dr Henry James Wynyard Stokes, Director, Access and Client Services

Advisory Council on Australian Archives
- Mr Ralph Jacobi, AM, Chairman
- Dr Carol Ann Liston, Member

CANBERRA, 21 February 1991

Private Citizen
- Dr Frank Cain, Aranda, ACT

Private Citizen
- Mr John Edward O'Brien Waterford, Canberra, ACT

CANBERRA, 14 March 1991

Inspector-General of Intelligence and Security
- Mr John Roger Holdich

SYDNEY, 29 April 1991

Private Citizen
- Mr Laurence Aarons, Maianbar, NSW

Private Citizen
- Dr Margaret Ellinor Bevege, Bexley, NSW

Archives Authority of New South Wales
- Mr Douglas John Cross, Sydney, NSW

Private Citizen
- Mr Richard Hall, Redfern, NSW

Public Records Office, Victoria
- Mr Christopher Hurley, Melbourne, VIC

Private Citizen
- Mr David McKnight, Sydney, NSW

University of Western Sydney
- Dr Andrew John Moore, Campbelltown, NSW

Privacy Commissioner
- Mr Kevin Patrick O'Connor, Sydney, NSW

Private Citizen
- Professor Patrick James O'Farrell, Kensington, NSW

MELBOURNE, 30 April 1991

Royal Historical Society of Victoria
- Professor Weston Arthur Bate, Melbourne, VIC
- Professor Alan George Lewers Shaw, Melbourne, VIC

Private Citizen
- Mr Mark Peter Brogan, Kensington, WA

Private Citizen
- Ms Joan Marjorie Coxsedge, MP, Footscray, VIC

The University of Melbourne
- Professor Stuart Forbes Macintyre, Parkville, VIC

Private Citizen
- Mr Laurence William Maher, Parkville, VIC

Private Citizen
- Mr Bernard Taft, Clifton Hill, VIC

CANBERRA, 11 SEPTEMBER 1991

Australian Archives
- Mr George Ernest Nichols
- Dr Henry James Wynyard Stokes

APPENDIX C

5

Attorney-General

The Hon. Michael Duffy M.P.
Parliament House
Canberra ACT 2600

SEC90/10816:MW

4 SEP 1990

The Hon Keith Wright, MP
Presiding Member
Parliamentary Joint Committee on ASIO
Parliament House
CANBERRA ACT 2600

Dear Keith

I refer to your letter of 23 August 1990 relating to 2 aspects of the work of the Parliamentary Joint Committee on ASIO.

You mention the advice you recently received from my Department in relation to Part VA of the Australian Security Intelligence Organization Act 1979, and the implications of that advice for the work of the Committee. I understand that those problems largely relate to the anomalous distinction in the manner in which 2 provisions in Part VA treat evidence taken by the Committee from a witness and documents produced to the Committee. Those provisions are sections 92G (publication of information obtained by the Committee) and section 92P (continuance of evidence taken by a previously constituted Committee).

To resolve the difficulties that may impede the work of the Committee, I believe that sections 92G, 92P and 92R (dealing with the application of the Parliamentary Papers Act to evidence given to the Committee) should be amended as soon as possible to allow the Committee to continue its current review and to publish the contents of a document produced to it. Subject to the Prime Minister's agreeing to that course of action, it may be possible for the necessary amendments to be made this Sittings.

You also seek my approval, as required by subsection 92F(2), for the Committee's determining to undertake part of its current review of the access provisions of the Archives Act in public. While I propose to agree to your request, it gives rise to a number of considerations.

First, in my view, while a public hearing would offer a useful way for the Committee to take oral evidence and to question a person on the basis of a submission that that person had already made to the Committee and which the Committee had determined to accept, it is difficult to see how in practice the Committee could receive a submission "in public" in the same sense that it may take oral evidence "in public". However, I recognise that the submissions that the Committee has received to date have been received while the Committee has been conducting a "review in private". That means that section 92G applies and the Committee cannot therefore disclose the contents of the submissions even when questioning their authors on them in public hearings.

I understand that the Committee proposes that the submissions form the basis of its proposed program of public hearings, and that the Committee proposes to adopt a procedure of contacting those who have made submissions to ask if they wish to appear as witnesses at the public hearings. If a person so agrees, it would be appropriate for the person to be asked by the Committee at its public hearings if s/he objected to the Committee's receiving "in public" the submission already received as part of the review in private so that the prohibition in section 92G would not apply. Such a procedure would remove the need, as proposed in your letter, for my approval to exclude authors of submissions who have not provided under subsection 92G(1) a written authority for the publication of their submissions. This is because the agreement of the witness to that procedure would involve consent to the disclosure of the contents of the submission.

It therefore seems practicable for my approval to be limited to the taking of evidence from a witness in public, whether on the basis of a submission already made by the witness or not, and, for the purpose of taking evidence, receiving in public submissions that had already been made to the Committee's review in private.

Secondly, and related to the first, I propose that it be a condition that any request by a witness to have particular evidence heard in camera be acceded to by the Committee.

Thirdly, the proposed exclusion of officers of security agencies from appearing at public hearings should, in my view, be extended to former officers. I assume that the Committee has proposed to exclude serving officers from appearing in public not just because of concerns about revealing their identities but also because any information such officers may give in public hearings may be operationally sensitive or prejudicial to security. Those reasons are just as applicable to the position of former officers.

Finally, you will, I am sure, recognise the legitimacy of concerns about the potential for public hearings of the Committee to be used as a forum for publicising information that may be prejudicial to national security. Without wishing to lay down detailed mechanisms, I believe it necessary for the Committee to take all reasonable steps to ensure that, if it appears that evidence from a particular witness may be of a nature which would disclose a matter that the Committee is not, under section 92N, permitted to disclose in a report to the Parliament, that evidence is not heard in public.

In view of those considerations, I now approve the making of a determination by the Committee to conduct hearings in public as part of its review of the access provisions of the Archives Act subject to the determination being limited to the following circumstances. Such hearings in public may consist of the Committee's taking evidence from any person other than -

- an officer or employee of an intelligence or security agency within the meaning of the Act, or a former officer or employee of such an agency; or

- in relation to particular evidence, a person who asks that that evidence be given to the Committee in camera.

The Committee may also, for a purpose connected with its taking such evidence, receive in public submissions that had already been made to the Committee's review in private.

I shall arrange for the Director-General of Security to be provided with a copy of this letter so that he may be aware of the terms of my approval of the Committee's determining to undertake public hearings as part of the Archives Act review. It may be that the Director-General would wish one of his officers to contact staff of your Committee to discuss the means by which the Committee could alert itself to the likelihood that matters whose disclosure is restricted under section 92N were about to be raised in the Committee's public hearings.

Yours sincerely

MICHAEL DUFFY

STATISTICS ON ARCHIVE REQUESTS OF ASIO

RESOURCES REQUIRED TO PROCESS REQUESTS WITHIN 90 DAYS

At 30 June 1991 ASIO had 239 applications under the Archives Act that had exceeded the 90 day limit. These applications cover 1,255 subjects of inquiry and embraced both individuals and organisations, and call for the processing of some 42,700 folios. The chart at Annex A shows the history of this backlog and Annex B shows the significant increase in applications over the period August to November 1990 that caused the backlog.

The application rate during 1991 has dropped to about one third of the November 1990 high, but is still about three times the rate that applied during 1988 and 1989 when three ASIO officers kept the backlog close to zero. This suggests that up to nine officers could be required to handle future requests within the 90 day statutory limit provided application rates remain at present levels.

It should be noted that about 85 per cent of recent applications originated with three persons and ASIO has no rational basis for estimating what they might do in future, the large increase in applications during the latter part of 1990 may be a one off aberration caused by these persons. Therefore, ASIO cannot make any reliable assessment concerning future trends, other than to note that recent public statements by one of these persons indicate that application rates may increase in future.

The pool of records in the open access period increases each year as records reach thirty years of age. This means that the number of files that need to be searched and the number of records that need to be processed in relation to applications increases each year with the consequence that, over the years, the workload attaching to processing each application will increase. ASIO has no reliable way of estimating this annual incremental creep in workloads or to quantify the effect it will have on Archives Section productivity.

On the basis of recent experience it is estimated that about seven person years of effort will be required to clear the present backlog. This figure does not include the nine officers to handle future applications, or staff involved in internal reconsiderations, AAT appeals, staff training, and other requests for access to ASIO records from members of the public, including freedom of information cases. These activities are currently discharged by the section that handles archives applications. Also, this figure make no allowance for annual incremental creep in workloads.

c. the examination of records in the open access period to identify exempt and partially exempt material;

d. the marking of exemptions;

e. the preparation of exemption lists and reasons for exemption for Australian Archives; and

f. the preparation of papers for transmission to Australian Archives.

This labour intensive process will need to be applied to processing some 42,700 folios to clear the backlog.

Experience of processing ASIO archival records indicates that longer-serving intelligence officers or officers familiar with historical research methods are needed to process archives applications to the required standards. The employment of other officers would require additional staff resources to be allocated to the quality control function. Also, allegations of inconsistent application of exemption standards are a major component of current complaints made to the Inspector-General of Intelligence and Security and have been used as a ground for challenging decisions before the AAT

The chart at **Annex C** shows the probable time required to clear the existing backlog and to process future applications within 90 days for various staffing options for the ASIO Archives Section.

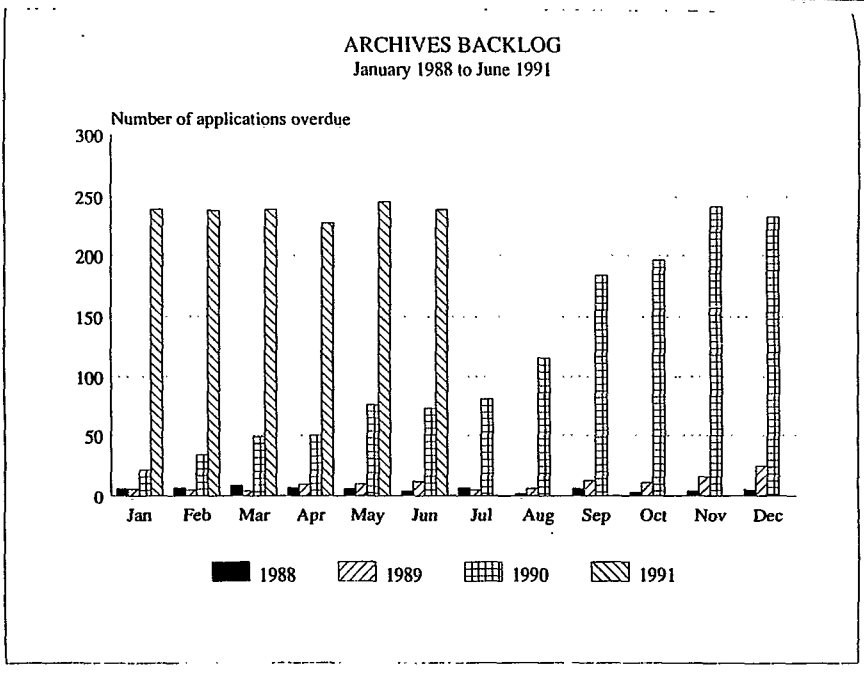
The data used for the chart is based on current processing rates and assumes that:

a. nine officers will be required to process future applications;

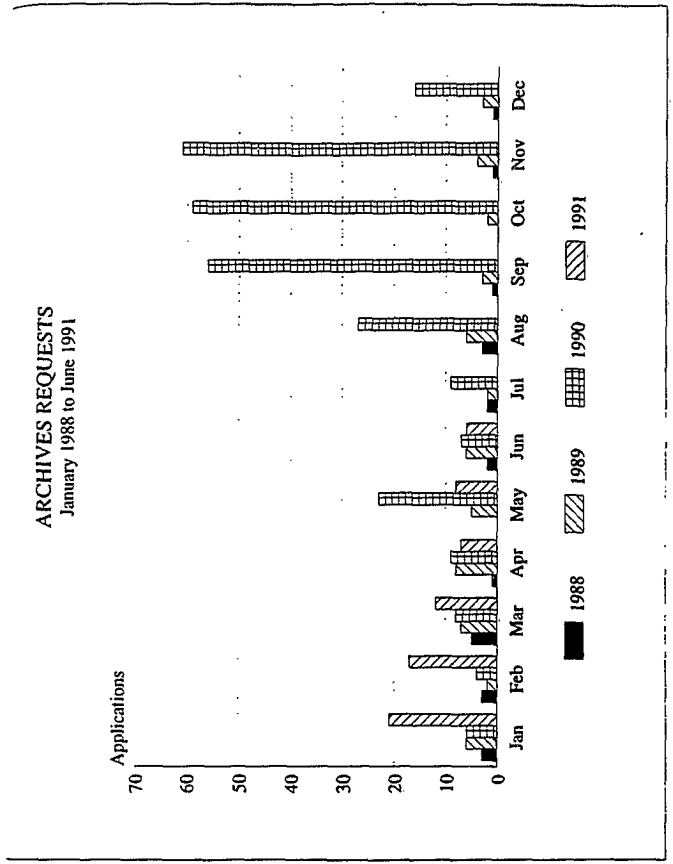
b. one officer will act as section supervisor; and

c. the remaining officers will contribute to clearing the backlog.

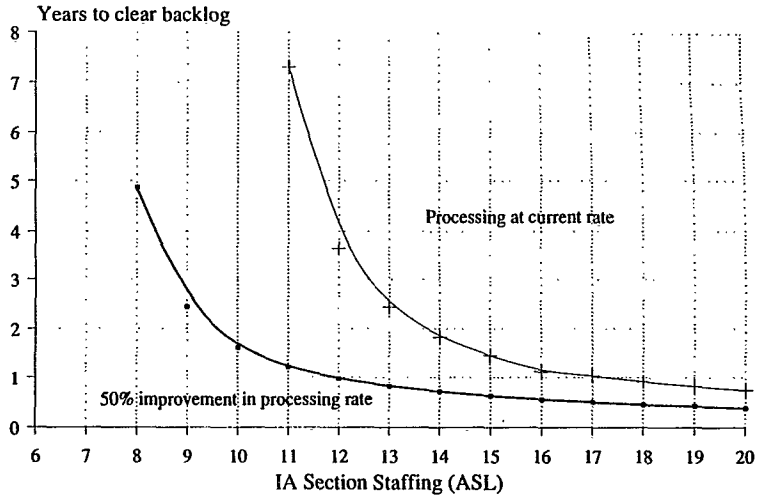
On this basis a staffing level of at least eleven officers will be required to make any impact on the backlog (and will require about seven years to clear the backlog), and a staffing level greater than sixteen officers will not reduce to any appreciable extent the time required to clear the backlog (about one year).


ARCHIVES BACKLOG
January 1988 to June 1991
Number of applications overdue
300
250
200
150
100
50
0
Jan
Feb
Mar
Apr
May
Jun
Jul
Aug
Sep
Oct
Nov
Dec
1988
1989
1990
1991

ANNEX A


ARCHIVES REQUESTS
January 1988 to June 1991
Applications
70
60
50
40
30
20
10
0
Jan
Feb
Mar
Apr
May
Jun
Jul
Aug
Sep
Oct
Nov
Dec
1988
1989
1990
1991

INFORMATION ACCESS SECTION STAFFING
OPTIONS TO CLEAR ARCHIVES BACKLOG



ANNEX C

RECENT ARCHIVES REQUESTS FROM Dr PEMBERTON

11-09-1991	COMMUNISM OVERSEAS
11-09-1991	DEMOCRATIC AUSTRALIA
11-09-1991	CITIZENS RIGHTS COMMITTEE - DEMOCRATIC FREEDOM UNION
11-09-1991	CENTRAL CONTROL & AUDITING COMMISSION
11-09-1991	COMMUNISM IN THE ABC & COMMERCIAL BROADCASTING STATIONS
11-09-1991	COMMUNISM: STATE GOVERNMENT DEPARTMENTS
11-09-1991	RESEARCH SERVICE
11-09-1991	THE PEOPLE'S UNION
11-09-1991	PAKIES CLUB
10-09-1991	POLITICAL RESEARCH SOCIETY
10-09-1991	AUSTRALIAN LEGION OF EX-SERVICEMENN
10-09-1991	METROPOLITAN THEATRE PLAYERS - PEOPLES'S COUNC. CULTURE
10-09-1991	GREEK ORTHODOX CHURCH IN AUSTRALIA
10-09-1991	MINERS' YOUTH LEAGUE
10-09-1991	COMMUNISM IN ABC
10-09-1991	CASINO DETENTION CAMP
10-09-1991	CHINESE SEAMAN'S UNION
10-09-1991	CHINESE COOPERATIVE MOVEMENT & SOCIETIES
10-09-1991	CAPTAIN J DE SERIERE
10-09-1991	INFORMATION FROM OUTSIDE AUSTRALIA
10-09-1991	J LYNCH
10-09-1991	CHINESE FILE
10-09-1991	POLISH COMMUNITY IN NEW SOUTH WALES
10-09-1991	PORT JACKSON JAZZ BAND
10-09-1991	PRINTERS INVESTMENT CO PTY LTD
10-09-1991	PUBLICITY PRESS PTY LTD
10-09-1991	REPUBLIC OF THE GREAT EAST
10-09-1991	RIGHTIST ORGANISATION (EXCEPTING THE ORGANISATION)
10-09-1991	WOLLONGONG ADULT EDUCATION WEEK COMMITTEE-TEACHERS' FEDERATIO
10-09-1991	PACIFIC EXPRESS COMPANY
10-09-1991	RSS & AILA ASSOCIATED SOLDIER SETTLER'S CONFERENCE
10-09-1991	ASSOCIATION OF NEW CITIZEN - NSW
10-09-1991	INTERNATIONAL UNION OF ASTRONOMERS
10-09-1991	WHITE RUSSIAN CLUB
10-09-1991	JEWISH POLITICAL ORGANISATION (THE BUND)
10-09-1991	LEAGUE OF RIGHTS
10-09-1991	ANTI T.B ASSOCIATION
10-09-1991	TRANS-PACIFIC CLUB
13-09-1991	JEWISH YOUTH LEAGUE
13-09-1991	SHOMRIM ZIONIST YOUTH ORGAINSATION
13-09-1991	YUGOSLAV RED CROSS SOCIETY
13-09-1991	CITIZENS TB LEAGUE OF NSW
13-09-1991	OVERSEAS SEAMEN IN AUSTRALIA STRIKE
13-09-1991	ARAB LEAGUE PAN-ISLAMIC ACTIVITY
13-09-1991	SANE DEMOCRACY LEAGUE
13-09-1991	AMERICAN NATIONAL CLUB
13-09-1991	WORLD FRIENDSHIP ASSOCIATION
13-09-1991	TRANSLATIONS OF LITERATURE
13-09-1991	AUSTRALIAN RIFLE CLUBS
13-09-1991	LIDCOMBE MEMORIAL YOUTH CENTRE
13-09-1991	AUSTRALIAN WOMEN'S MUTUAL AID ASSOCIATION
13-09-1991	BOXER'S AND WRESTLER'S ASSOCIATION
13-09-1991	BRITISH WELFARE SERVICE
13-09-1991	SYDNEY CITIZENS' COMMITTEE

13-09-1991	UNITED ASSOCIATION OF WOMEN
13-09-1991	ARTS AND ENTERTAINMENT YOUTH CLUB
13-09-1991	FABIAN SOCIETY IN AUSTRALIA
13-09-1991	RUSSIAN PERIODICALS
13-09-1991	COMMUNISM
13-09-1991	CONFIDENTIAL OVERSEAS REPORTS NO.2
13-09-1991	REPORTS FROM AUSTRALIA NO.3
13-09-1991	ACTIVITIES OUTSIDE AUSTRALIA NO.4
13-09-1991	INFORMATION FROM OUTSIDE AUSTRALIA NO.5
13-09-1991	LABOUR SOCIALIST GROUP
13-09-1991	SOVIET DIPLOMATIC STAFF
13-09-1991	WOOL FOR JAPAN
13-09-1991	FEODOR NOSOV
13-09-1991	N.E.I
13-09-1991	NATIONAL THEATRE MOVEMENT
13-09-1991	REVISIONISTS (JEWISH)
13-09-1991	WOMEN'S INTERNATIONAL DEMOCRATIC FEDERATION
13-09-1991	FELIX NAGGAR-AGENCE FRACE-PRESSE
13-09-1991	THE FRENCH PRESS SERVICE
13-09-1991	ITALIAN CLUBS AND ASSOCIATIONS
13-09-1991	WOMEN'S LEAGUE FOR PEACE AND FREEDOM CZECHOSLOVAKIA
13-09-1991	AUSTRALIAN EUROPEAN AGENCY
13-09-1991	TRANS OCEANIC AIRWAYS
13-09-1991	UNITED JEWISH OVERSEAS RELIEF FUND
13-09-1991	ROYAL SOCIETY OF NSW
13-09-1991	RUSSIAN COMMUNITY
13-09-1991	SQUATTERS
13-09-1991	STATUS OF WOMEN COMMISSION
13-09-1991	SYDNEY UNIVERSITY LABOUR CLUB
13-09-1991	TARBUTH ZIONIST CULTURAL ORGANISATION
13-09-1991	TIDAL PUBLICATIONS
13-09-1991	UNION MOVEMENT (UK)
13-09-1991	UNITED NATIONS ASSOCIATION OF AUSTRALIA
13-09-1991	ARMY INTELLIGENCE ASSOCIATION
13-09-1991	FRIENDS OF CHINA DEMOCRATIC ASSOCIATION
13-09-1991	REPORT BY BARN'S ON GREEK COMMUNITY
13-09-1991	EXTREMIST ORGANISATIONS
13-09-1991	FORUM OF THE AIR
13-09-1991	GAMBIT CHESS CLUB
13-09-1991	CHINESE IN AUSTRALIA
13-09-1991	DISTRIBUTISTS CLUB, SYDNEY UNIVERSITY
15-10-1991	A C HORNE
15-10-1991	ARTHUR ANTON GEITZGELT
15-10-1991	HAROLD KENNETH GEE
15-10-1991	JOHN JAMES CAHILL
15-10-1991	R G INGERSOLL
15-10-1991	DR ALEX JOLLEY
15-10-1991	HAL LASHWOOD
15-10-1991	GRANTLEY JAMES OGILVIE
15-10-1991	WILLIAM FERGUSON
15-10-1991	REGINALD EDWARD WELLARD
15-10-1991	ELSIE ROSE STEAD
15-10-1991	GEORGE ALFRED MORRISON
15-10-1991	MICHAEL HEALY
15-10-1991	JEAN OLDHAM
15-10-1991	AUSTRALIAN ANTI COMMUNIST LEAGUE
15-10-1991	COUNCIL FOR CIVIL LIBERTIES
15-10-1991	D MCLEAN
15-10-1991	VICTOR WALKER BIRD (AKA BOURKE)
15-10-1991	SURVEYORS & DRAUGHTMENS OF AUSTRALIA & ARCHITECTS, ENGINEERS

15-10-1991	MONA CATHERINE BROTHERON
15-10-1991	PETER YAAGER
15-10-1991	JULIE YAAGER
15-10-1991	MONA RAVENSCROFT
15-10-1991	CHAIM BREZNIAK
15-10-1991	VICTOR M MAXWELL (FORMERLY MAXIMOFF)
15-10-1991	MARJORIE PIZER
15-10-1991	EDWARD WAY DARLEY IRWIN
15-10-1991	DOROTHY IRWIN
15-10-1991	RENE GARRETT
15-10-1991	CHARLES COUSENS
15-10-1991	JAMES LAWRENCE CORNFORD
15-10-1991	RALPH E COBLEY
15-10-1991	UNITED STATES COMMISSION ON EMPLOYEES LOYALTY
15-10-1991	EMANUEL RICHARDO KLUGMANN
15-10-1991	GUINEA AIR TRADERS
15-10-1991	CYPHER SECURITY
15-10-1991	JOHN KEARNS OR CAIRNS
15-10-1991	ALLEGATIONS OF EX NAZI SS GUARD ARRIVING AS BALT. MIGRANTS
15-10-1991	A C P NEWSLETTER
15-10-1991	A C P URANIUM
15-10-1991	GREEK CHEF AT STIRLING CAFE
15-10-1991	GERALD KINGSFORD PEEL
15-10-1991	LAWRENCE JOHN MAHONEY
15-10-1991	LUDWIG NADEL
15-10-1991	HYAM BREZNIAH
15-10-1991	LEN FOX
15-10-1991	W J WHALEN
15-10-1991	MARGARET KENT-HUGHES
15-10-1991	SEAN O'CASEY
15-10-1991	EDWARD FOWLER HILL
15-10-1991	SECURITY CHECK
15-10-1991	RICHARD HALL
15-10-1991	GEORGE JOHN MUNSTER
15-10-1991	HARRY STEIN
15-10-1991	JOCK GRAHAM
15-10-1991	EDGAR A ROSS
15-10-1991	W KEATING
15-10-1991	GEOFF CURTHOYS
15-10-1991	JACK EDWARD O'KEEFE
15-10-1991	COMMUNIST PROPAGANDA "INTERNATIONAL WOMENS DAY 1949"
15-10-1991	FRANK COURTNEY BROWNE
15-10-1991	JENMASMER CLOTHING CO
15-10-1991	LESLIE WILLIAM FLOOD
15-10-1991	ALAN JAMES HIGGS
15-10-1991	HAROLD RICH
15-10-1991	JAMES B POMEROY
15-10-1991	LAURA GAPP
15-10-1991	PETER FINCH
15-10-1991	JOHN O'KEEFE
15-10-1991	EDWARD (TED) ARROWSMITH
15-10-1991	ALEXANDER MAKAROFF
15-10-1991	REVEREND STUART G WATTS
15-10-1991	PEACE & FREEDOM LEAGUE, EASTLAKE CAMP, CANBERRA
15-10-1991	GEORGE DOUGLAS BIGNALL
15-10-1991	POLISH DEMOCRATIC SOCIETY
15-10-1991	NATIONAL UNION OF AUSTRALIAN UNI STUDENTS - INTERNAT UNION OF
15-10-1991	BRITISH AUSTRALIAN FEDERATION
15-10-1991	ANONYMOUS LETTER RE COMMUNISTS
15-10-1991	AUSTRALIAN SOCIETY OF RELATIVES AND FRIENDS OF THE MENTALLY I

15-10-1991	JAPANESE ACTIVITIES
15-10-1991	GERMAN SCIENTISTS IN AUSTRALIA
15-10-1991	BOON (E)
15-10-1991	JIM HEALEY
15-10-1991	ERNEST MORRISON
15-10-1991	DR J RUTHERFORD
15-10-1991	NORA BONNEY
15-10-1991	HERBERT EDWARD MARCHANT FLINN
15-10-1991	KATHLEEN MARY BACON
15-10-1991	KARL ROWLANDS ATCHERLY
15-10-1991	GAVIN STPDARY CASEY
15-10-1991	JOHN CHARLES H PROUD
15-10-1991	ERIC DARK
15-10-1991	FRED PATERSON
15-10-1991	WILLIAM ERIC GOLLAN
15-10-1991	WILLIAM JOHN (JACK) LYNCH
16-10-1991	JORIS IVENS
16-10-1991	MAY DAY CELEBRATIONS
16-10-1991	SARDJONO
16-10-1991	BANDOENG MARU
16-10-1991	NEW HOUSEWIVES ASSOCIAITON
16-10-1991	FAX
16-10-1991	"FREEDOM FOR MALAY" WALTER BLASCHKE
16-10-1991	GERSON LEIBOVITZ
16-10-1991	GEOGOA PTY LTD
16-10-1991	JOSEPH KOLMAN
16-10-1991	MALTESES SETTLERS ASSOCIATION
16-10-1991	D THOMPSON
16-10-1991	AVIATION GENERAL
16-10-1991	AVIATION: AIRCRAFT OPERATORS
16-10-1991	AVIATION: SUSPECTED SABOTAGE
16-10-1991	AVIATION: SMUGGLING BY AIR
16-10-1991	MARY CATHERINE CRISP
16-10-1991	TIDAL PUBLICATIONS
16-10-1991	KEITH EDEN
16-10-1991	JAMES JOYCE
16-10-1991	NSW DEBATING SOCIETIES UNION
16-10-1991	UNITED FREEDOM MOVEMENT
16-10-1991	AUSTRALIAN MIGRATION VOLUNTARY SERVICE OF NSW
16-10-1991	SALE OF AIRCRAFT TO FOREIGN INTERESTS
16-10-1991	AUSTRALIA-SOVIET FIRENDSHIP LEAGUE
16-10-1991	COMMUNISTS AT C....? RAILWAY WORKSHOP
16-10-1991	"THINGS I HEAR"
16-10-1991	FRANCIS VARTNEY BROWNE
16-10-1991	FRANK COURTNEY
16-10-1991	INTERNATIONAL ORGANISATION OF JOURNALISTS
16-10-1991	J L GRAHAM
16-10-1991	RICHARD EVANS-ALEXANDER BROTHERTON
16-10-1991	NATIONAL POULTRY FARMERS ASSOCIATION
16-10-1991	AUSTRALIAN FEDERATION OF WOMEN VOTERS
16-10-1991	CHRISTIAN PACIFIST MOVEMENT, BRISBANE
16-10-1991	SOUTH SEA CLUB - BREAKAWAY FROM POLYNESIAN CLUB
16-10-1991	POLYNESIAN CLUB OF SYDNEY
16-10-1991	AUSTRALIAN STUDENT CHRISTIAN MOVEMENT, NSW
16-10-1991	RUSSIAN CENTRAL WELFARE COMMITTEE
16-10-1991	ITALO-AUSTRALIAN CLUB
16-10-1991	INTERPRETERS FILE
16-10-1991	'AUSTRALIA FIRST' INQUIRY
16-10-1991	ITALIAN CONSULAR PROPERTY
16-10-1991	POSSIBILITY OF COMMUNIST SABOTAGE

16-10-1991	CLARENCE HART CAMPBELL
16-10-1991	THE IMPLICATIONS OF ANTI COMMUNIST ACTIVITY IN AUSTRALIA
16-10-1991	PRO RUSSIA ACTIVITIES AFFECTING AUSTRALIA
16-10-1991	JOHN LAIRD GLASS
16-10-1991	T ELNIK SCHUURMAN
16-10-1991	HARRY BRIDGES
16-10-1991	COMMUNIST DOSSIERS 1 TO 958 WITH INDEX
16-10-1991	DR E H BURGMANN
16-10-1991	BRITISH AUSTRALIAN FEDERATION UNION
16-10-1991	NATIONS FORUM OF THE AIR
16-10-1991	CYPRIAN BROTHERLY SOCIETY
16-10-1991	E M I (AUST) PTY LTD
16-10-1991	(LONG RANGE WEAPONS ORGANISATION) AUSTRALIAN AMALGAMATED (ASI
16-10-1991	COMMONWEALTH SCIENTIFIC & INDUSTRIAL RESEARCH ORGANISATION
16-10-1991	PACKAGE CONTAINING PEACE COUNCIL MEETINGS (NOTES)
16-10-1991	AUSTRALIAN SEAMANS UNION
16-10-1991	NEW DELHI CONFERENCE
16-10-1991	FEDERAL PACIFIST COUNCIL
16-10-1991	SYDNEY UNIVERSITY ASSOCIATION TEACHERS STAFF
16-10-1991	ILLEGAL TRANSMITTERS
16-10-1991	"HOW COMMUNIST SPIES BETRAYED AN AUSTRALIAN CONVOY"
16-10-1991	DOUBLE BAY COURIER PUBLISHING COMPANY
16-10-1991	INDEPENDENT THEATRE LTD
16-10-1991	LETTER BOMBS
16-10-1991	VOYAGE BOOKSHOP - IRENE SPEIGHT
16-10-1991	SAFEGUARDING OF RECORDS
16-10-1991	AMERICAN INDUSTRIAL RESEARCH FOUNDATION
16-10-1991	AMATEUR RADIO ASSOCIATIONS
16-10-1991	ZORA CLUB
16-10-1991	POSSIBLE ATTEMPT TO REVIVE FASCISM
16-10-1991	COSMIC FORCE COMMITTEE
16-10-1991	MILNE BAY ASSOCIATION
16-10-1991	ALLEGED SHIPMENT OF ARMS TO BURMA
16-10-1991	PUSHKIN CIRCLE
16-10-1991	ALL MALAYA PEASANTS UNION
16-10-1991	SYDNEY UNIVERSITY LIBERAL CLUB
16-10-1991	POSSIBLE TRAFFICKING IN ARMS & AMMUNITION
16-10-1991	CURRENT PROBLEMS DIGEST
16-10-1991	ANTI COMMUNIST CENTRE OF LIBERATION MOVEMENT OF PEOPLES OF RU
16-10-1991	GREEK COMMUNITY OF NEWCASTLE
16-10-1991	SKYWAYS INTERNATIONAL AIR TRANSPORT COMPANY
16-10-1991	THE USTAC
16-10-1991	AUSTRALIAN INSTITUTE OF POLITICAL SCIENCE
16-10-1991	FEDERATION OF AUSTRALIAN TECHNICAL COLLEGE STUDENTS
16-10-1991	FEDERATION OF AUSTRALIAN STUDENTS
16-10-1991	COASTAL AIRLINES
16-10-1991	AUSTRALIAN INDONESIA ASSOCIATION
16-10-1991	MR SLAMET
16-10-1991	NATIONAL UNION OF INDONESIAN STUDENTS
16-10-1991	SOVIET DIPLOMATIC COURIERS
16-10-1991	ITALIA LIBERA MOVEMENT
16-10-1991	PERIODICAL TITLED "VIEW"
16-10-1991	BAHA'I ASSEMBLY
16-10-1991	PROTOCOLS OF THE ELDERS OF ZION
16-10-1991	VOTERS ASSOCIATION FOR TAX REDUCTION
16-10-1991	SOCIAL AMENITIES LEAGUE