

The Parliament of the Commonwealth of Australia

A REVIEW OF SECURITY ASSESSMENT PROCEDURES

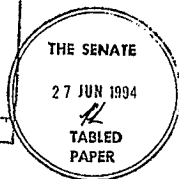
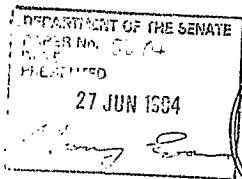
Report of the
Parliamentary Joint Committee on the
Australian Security Intelligence Organization

March 1994

Australian Government Publishing Service
Canberra

ASIO





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Membership of the Committee

36th Parliament

Presiding Member	Mr K W Wright, MP
Members	Senator J R Coulter Senator A W R Lewis Senator A O Zakharov Mrs C Jakobsen, MP Mr P J McGauran, MP Mr G D Gibson, MP
Secretary	Mr D W Nairn

37th Parliament

Presiding Member	Mr R N J Gorman, MP
Members	Senator J R Coulter Senator B C Teague (from 1 July 1993 to 6 October 1993) Senator A W R Lewis (to 1 July 1993) Senator N H Minchin (from 6 October 1993) Senator A O Zakharov Mr G Campbell, MP Mr P G Dodd, MP Mr B C Scott, MP
Secretary	Mr D W Nairn (to 24 November 1993) Mr P N Gibson, MC (from 24 November 1993)

Terms of Reference

To review the operation of Part IV of the *Australian Security Intelligence Organization Act 1979* and to report on the manner in which the Organization performs its function of giving security assessments under that Part, the effectiveness of the procedures established for the purpose of performing that function and the usefulness of assessments so issued.

Acronyms and Abbreviations

AAT	Administrative Appeals Tribunal
ACTU	Australian Council of Trade Unions
AFP	Australian Federal Police
APS	Australian Public Service
ASIO	The Australian Security Intelligence Organization
ASIO Act	<i>Australian Security Intelligence Organization Act 1979</i>
CIS	Commonwealth Investigation Service
DIEA	Department of Immigration and Ethnic Affairs
DFAT	Department of Foreign Affairs and Trade
DGS	Director-General of Security
DPIE	Department of Primary Industries and Energy
DSAP	Designated Security Assessment Position
IGIS	Inspector-General of Intelligence and Security
ILO	International Labour Organisation
MAL	Migrant Alert List
MPRA	Merit Protection and Review Agency
POT	Position of Trust
PSM	Protective Security Manual
PSU	Public Service Union
RCASIA	Royal Commission into Australia's Security and Intelligence Agencies
RCIS	Royal Commission into Intelligence and Security
SAT	Security Appeals Tribunal
TRIPS	Travel Records Information Processing System



Attorney-General

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

92075332

10 JUN 1994

Mr R Gorman, MP
Presiding Member
Parliamentary Joint Committee on ASIO
Parliament House
CANBERRA ACT 2600

Dear Mr Gorman

I refer to your letter of 3 May 1994 seeking my advice as to whether, in my opinion, the report of the Committee entitled 'A Review of Security Assessment Procedures' and related transcripts and submissions disclose, or are likely to disclose, any material contrary to subsection 92N of the *Australian Security Intelligence Organization Act 1979* (the Act).

In paragraph 2.10 (on page 12) of the Report there is a reference to the number of processing officers in ASIO's Security Assessment Branch. Would you please remove reference to this number as public disclosure of the resources the Organization deploys in any particular area may prejudice the performance of its functions.

I understand that Mr Gibson, Secretary to the Committee, has been consulted on this proposed deletion.

Apart from that minor deletion, I am, for the purposes of subsection 92N(2) of the Act, satisfied that the Report and related material do not disclose matters of the kind specified in subsection 92N(1).

Yours sincerely


MICHAEL LAVARCH

Recommendations

Recommendation 1

The Committee recommends that to overcome the problem of delays in completing the security clearance process, submitting authorities should be able to issue provisional clearances after a specified period without ASIO advice (paragraph 2.25).

Recommendation 2

The Committee recommends that:

Commonwealth agencies be required to include the following information in their annual reports:

- . the number of designated security assessment positions;
- . the number of positions of trust;
- . the number of security assessments completed;
- . the number of assessments involving denial of access, including reasons, for both designated security assessment positions (based on a Part IV assessment) and positions of trust (not based on a Part IV assessment) (paragraph 3.9).

Recommendation 3

The Committee also recommends that:

There continue to be no charge levied by ASIO for conducting Part IV assessments (paragraph 3.9).

In relation to the role of Commonwealth agencies in the security clearance process:

Recommendation 4

The Committee recommends that the Attorney-General's Department, in consultation with the Privacy Commissioner and relevant unions, review the value and content of the security questionnaire to ensure that the required information is necessary and relevant (paragraph 3.20).

Recommendation 5

The Committee recommends that all security interviews within agencies be conducted by appropriately qualified, trained and experienced officers (paragraph 3.20).

Recommendation 6

The Committee recommends that the Attorney-General's Department consider introducing a work-based assessment process as proposed by the Privacy Commissioner (paragraph 3.20).

Recommendation 7

The Committee recommends that the Privacy Commissioner continue to undertake privacy audits of Commonwealth agencies (paragraph 3.20).

Recommendation 8

The Committee recommends that in general all parties to a Security Appeals Tribunal hearing should be present throughout the hearing, subject to the Tribunal having the discretion to exclude one party or to use masking technology in the presentation of evidence where it considers that such a course is warranted in the national interest (paragraph 4.32).

Recommendation 9

The Committee recommends that the process of establishing a new security division of the Administrative Appeals Tribunal should be accelerated and that provision should be made for an appeal to the Tribunal by any person aggrieved by an access decision of an agency head (paragraph 4.40).

Preface

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 reconstituted in the 37th Parliament on 26 May 1993.

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

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

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

The Act further 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 ASIO that does not affect any person who is an Australian citizen or a permanent resident;
- (c) reviewing a matter, including a matter that relates to intelligence collection methods or sources of information, that is operationally sensitive; or
- (d) originating inquiries into individual complaints concerning the activities of ASIO.

The Act provides that the Committee shall not, in a report to 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; or

- (b) classified material or information on the methods, sources, targets or results of the operations or procedures of the Organization the public disclosure of which would, or would be likely to, prejudice the performance by the Organization of its functions.

The Committee is required by the Act to obtain the advice of the Minister as to whether the disclosure of any part of the report would, or would not be likely to, disclose any of the above matters before presenting its advice to Parliament. The Attorney-General has provided advice in relation to this report - see page xi.

Under subsection 92F(2) of the ASIO Act the Committee is required to conduct a review in private unless the Committee, with the approval of the Minister, otherwise determines.

In the 36th Parliament, the Committee determined by resolution that part of its review into security assessment procedures would be conducted in public, in accordance with the advice of the Minister, the Attorney-General, the Honourable Michael Duffy, MP. In the present Parliament, the Committee took the same position, in accordance with the advice from the Honourable Michael Lavarch, MP, the present Attorney-General. He approved of the Committee conducting part of the review in public provided that the Committee would always take evidence in camera from:

- . an officer or employee of an intelligence or security agency or a former officer or employee of such an agency; and
- . in relation to particular evidence, a person who so requests.

The Attorney's advice included a requirement that the Committee take all reasonable steps to hear witnesses in camera where it anticipated that their evidence might disclose matters that the Committee is forbidden to disclose by section 92N of the ASIO Act.

This course of action was followed in the conduct of this review.

The review

The review was originally referred on 24 July 1992 with terms of reference requiring the Committee to:

Review the operation of Part IV of the Australian Security Intelligence Organization Act 1979 and to report on the manner in which the Organization performs its function of giving security assessments under that Part, the effectiveness of the procedures established for the purpose of performing that function and the usefulness of assessments so issued.

The inquiry was not completed in the 36th Parliament, and the matter was again referred by the present Attorney-General on 15 May 1993. Under subsection 92P of the ASIO Act, the present Committee has had access to the evidence taken by the previous Committee.

The conduct of the review

The review was advertised nationally on 1 August 1992 and again on 19 June 1993. In addition, submissions were invited from Commonwealth agencies. Twenty nine submissions were received - these and exhibits incorporated in the Committee's records are listed at Appendix A. Public hearings were held in Canberra on five occasions. A list of witnesses who gave evidence in public is at Appendix B.

Chapter One

Background

1.1 Part IV of the *Australian Security Intelligence Organization Act 1979* (the Act) provides the legislative framework for the Australian Security Intelligence Organization (ASIO) to conduct security assessments for Commonwealth agencies on matters relevant to their functions and responsibilities. This includes security assessments on individuals whose work involves access to information or areas to which access is controlled or limited on security grounds. Assessments prepared by ASIO are only in relation to security as defined in the Act. Part IV of the Act regulates the process to be followed when ASIO issues an adverse or qualified assessment and provides for judicial review of these assessments through the operation of the Security Appeals Tribunal.

1.2 The responsibility for decisions on access rests not with ASIO, but with the heads of Commonwealth agencies. ASIO provides advice when requested in accordance with Part IV of the Act, but agency heads alone are responsible for access decisions. Irrespective of the nature of a Part IV assessment, an agency head is solely responsible for checking such things as the identity, credentials, reliability, loyalty and maturity of a prospective employee before considering the granting of access. This clear delineation of responsibility was central to the issues raised in the Committee's inquiry, and it is therefore useful briefly to trace its evolution.

1.3 From its establishment in 1949, ASIO has had a role in the vetting of government employees whose work required access to information or access of national security significance. ASIO assumed this function from the Commonwealth Investigation Service (CIS) of the Attorney-General's Department.¹ In late 1948, the then Prime Minister had issued a directive that all officers of the Commonwealth, service or civilian, who handled defence information and documents of secret or top secret classification, be security checked by the CIS. He required that this process should be extended as opportunity offered to all officers of the service and all civilian officers of the service and associated departments.

1.4 ASIO took over these duties when it was established. In May 1949 the Prime Minister, in a direction to Mr Justice Reed, the first Director-General of Security, approved, inter alia, the following principles relating to security checking:

¹ See Second Report, Royal Commission into Intelligence and Security (RCIS), October 1977, Parliamentary Paper No 247/1977, pp 16-21.

'vetting' should take place only for those persons who have or may have access to such information classified as top secret or secret;

departments should submit lists of persons having access to such information;

if it was difficult to limit the persons having or who may have access to such information it may be necessary to 'vet' the whole staff of the department; and

'vetting' was to be confined to security aspects so that normally ASIO would not be concerned to ascertain whether a person has a criminal record.

1.5 As a direct consequence of these principles, it was subsequently decided that all officers currently having access to top secret and secret information and all candidates for appointment to the service should be 'vetted'. As noted by Mr Justice Hope in his 1977 Royal Commission report, the effect was a situation in which not only all recruits to the armed services but all applicants to join the clerical or professional grades of the public service were required to be 'vetted'. The criterion for vetting was not only access but employment in a particular range of positions, many of the occupants of whom might never need to have access.

1.6 The categories of persons 'vetted' by ASIO at the time of Mr Justice Hope's first Royal Commission in 1977 were:

persons under consideration for employment upon duties requiring access to classified material;

persons being considered for access to security controlled (Defence) areas;

applicants for the armed forces; and

applicants for appointment to the executive and clerical/administrative levels of the Australian Public Service.

1.7 The criteria applied were therefore access to classified matter, on the one hand, and employment categories (employment or potential employment with the Commonwealth) on the other. The latter category was enlarged by the practice of checking all applicants for a job rather than simply vetting the preferred applicant.

1.8 ASIO's evolving role in providing security assessments has been examined in considerable detail by two Royal Commissions, both conducted by Mr Justice Hope. The Royal Commission on Intelligence and Security (RCIS) began in 1974 and was followed in 1984 by the Royal Commission on Australia's Security and Intelligence Agencies (RCASIA).

1.9 The RCIS was established by the Whitlam government in 1974 in an atmosphere of deep suspicion of ASIO by many, including members of the government, that there was targeting by ASIO of those involved in legitimate political activities. It was known that ASIO was responsible for surveillance of individuals thought to be involved in activities that were 'subversive' and that it made reports to government, government agencies and private employers with detrimental consequences for the employment and potential employment prospects of individuals.

1.10 One of the terms of reference in the letters patent appointing the Royal Commission required the Commissioner to report on 'the use made by the Australian Government and its agencies of the information provided by the organizations'. In addition, the letters patent required Mr Justice Hope:

To make recommendations as to the procedures which should be introduced to permit review of administrative decisions affecting citizens, migrants and visitors which were or may have been based on, or influenced by, reports or information of an adverse kind furnished by the security intelligence services of the Australian Government.²

1.11 Most of the second RCIS report was devoted to a consideration of this term of reference. It should be noted that the salient features of the present security assessment and clearance system were in existence at the time of the RCIS:

official information on matter could be classified 'restricted', 'confidential', 'secret' and 'top secret'. These are still the categories used in classifying information;

ASIO provided 'advice' in the form of a security assessment to heads of Commonwealth agencies at their request in the form of an adverse, qualified or non prejudicial security assessment; and

security for the purpose of the assessment was according to the definition of security in the ASIO Act. The decision whether access should be allowed was made by the head of the Commonwealth agency, not by ASIO.

1.12 Mr Justice Hope sought in his Royal Commission to identify:

what persons should be the subject of such checks;

whether ASIO resources used on security checking were used to the

² First Report, Royal Commission on Intelligence and Security (RCIS), October 1977, Parliamentary Paper 246/1977, Appendix 1-A.

best effect; and

the civil liberties implications of the process.

1.13 Generally speaking he endorsed the model of security checking then in existence. He concluded that Australia had secrets which the Australian government had a duty to protect in the national interest. He was satisfied that, in the past, foreign powers had tried, by clandestine means, to obtain such Australian secrets. He concluded that similar attempts could be expected to be made in the future. A system of security checking for those in government employment was and should remain within the measures needed to protect Australia's security.

1.14 His reservations related to the amount of checking, which he found to be inordinate. This was due to the practice of checking all recruits to the armed services and the public service of the Commonwealth including all applicants for positions as well as those selected. He concluded that the system of security checking should be directed to protecting the security of the nation and be limited accordingly. Persons in Australian government employment should be security checked only if they will have, or may reasonably be expected in the near future to have, access to classified security matter or to security areas.³

1.15 Regarding the arrangements in force in the mid 1970s, he found that a great deal of checking was done which appeared to be unnecessary. This was both a waste of resources and an intrusion on civil liberties.

1.16 The security assessment by ASIO, he asserted, must be relevant to security. In providing a security assessment about a person, ASIO should not communicate any information about that person that it had not assessed as relevant to security as that term was used in the ASIO Act. Specifically, ASIO should communicate in unmistakably clear terms the relevance to security of any of the information provided about a person.

1.17 Sensitive positions should be so designated. A person should be able to find out whether occupying a position in the Australian Public Service (APS) would require him/her to be security checked and should only be security checked when it is virtually certain that he/she will be appointed to such position. The employing authority should clearly understand that ASIO's advice is a security assessment and is in no way a substitute for normal employment inquiries. Moreover, the employing authority should give any information that it considers relevant to security to ASIO for assessment.

1.18 Mr Justice Hope in RCIS was particularly concerned at the absence of a system of judicial review of ASIO's role in the security clearance process. He found that without adequate machinery for review of security assessments, grave and

permanent injustices could occur.⁴ He proposed the establishment of what was to become the Security Appeals Tribunal, concluding that such a tribunal was needed both to satisfy national treaty obligations and on civil liberties grounds.⁵

1.19 The establishment of such a tribunal was a consequence of Australia's adoption of the International Labour Organisation (ILO) *Convention 111 (Concerning discrimination in respect of employment and occupation)* which came into force in Australia on 15 June 1974. The Convention outlaws discrimination in employment, but makes an exception where a person is justifiably suspected of, or engaged in, activities prejudicial to the security of the state. The Convention provides that a person so suspected should have the right to appeal to a competent body established in accordance with national practice.

1.20 Mr Justice Hope found that there should be a *Security Appeals Tribunal* to review adverse or qualified security assessments. The subject of such assessments should be notified of that fact and, provided that it would not infringe upon the requirements of security, should be given access to the assessment. The recommendations of the RCIS were accepted by the Fraser government and implemented in 1979 by amendments to the ASIO Act.⁶

1.21 Mr Justice Hope reviewed the security assessment process again as part of the Royal Commission on Australia's Security and Intelligence Agencies (RCASIA) in 1984. He endorsed the scheme that had resulted from his earlier work in the RCIS, finding that the system required fine tuning rather than major reforms. In relation to the main features of the assessment process, he found that:

ASIO's role should remain advisory only, with the responsibility for the access decision remaining that of the agency head;

security for these purposes should continue to be governed by the definition of security in the ASIO Act;⁷

there should be regular re-checking of those with very high clearances; and

because of the intrusiveness of the process, vetting should be reduced to an absolute minimum.⁸

⁴ RCIS, Second report, p 104.

⁵ For the detailed background, see RCIS, Second Report, pp 64-110
⁶ Act No 113 of 1979.

⁷ It should be noted that the definition of security was amended after RCASIA to delete subversion.

⁸ Report, Royal Commission on Australia's Security and Intelligence Agencies (RCASIA), December 1984, Parliamentary Paper No 232/1985, pp 193-214.

³ RCIS, Second Report, pp 103-104.

1.22 A major focus of the findings was on the division of responsibility for checking between ASIO and the agencies. Mr Justice Hope found that there appeared to be a lack of understanding in some quarters of the limited nature of ASIO's responsibilities. There was a tendency by some agencies to rely on the ASIO assessment at the expense of their own inquiries. Mr Justice Hope reiterated that it was the responsibility of the agencies not ASIO to determine suitability on the grounds of character. He noted that the standard applied by the various Commonwealth agencies was not consistent. He stressed the importance of consistent standards across the board.

1.23 He believed that intensive vetting was only required for classifications of top secret and above. He concluded that 'negative vetting' was adequate for all classifications up to secret.⁹ To ensure a consistent and reasonable standard of checking he recommended an overhaul of the existing manuals so that they would specify the minimum extent of checking for each level of clearance. This should apply to all requiring access, public servants as well as contractors and suppliers needing to gain entry to sensitive facilities.

1.24 As a result of the findings of Mr Justice Hope in RCASIA the various manuals were reviewed and consolidated into one, the Protective Security Manual (PSM). The manual details all steps of the process that agencies clearing individuals for access should (but are not bound to) follow. The present arrangements were described to the Committee by officers of the Attorney-General's Department:

... [before] 1980, most agencies regarded an appropriate basis for the issue of a security clearance as comprising an ASIO security assessment and a satisfactory police records check. This basically was a records check where the absence of any record meant a person was considered suitable unless ASIO's assessment of the information gathered from interviews and forms was such as to indicate unreliability or disloyalty ... [M]any agencies appeared to continue to place almost total reliance on ASIO security assessments and police checks, and did little checking of their own ...

In March 1991, the Attorney-General, on behalf of the Government, released a new PSM to all Commonwealth agencies ... Feedback from users indicates that it is regarded as a much less complicated manual to use and apply than the earlier ones. Importantly, the PSM now clearly delineates, for the first time, the responsibilities

⁹ Negative vetting is characterised by a search of official records, such as those of the police and the security service, for adverse information and the granting of a clearance in the absence of such information.

of agency heads and ASIO in the security clearance process.

It also provides much greater emphasis to, and guidance about, the need for agencies themselves to conduct thorough assessments of a person's general suitability for access, particularly for the higher levels of clearance. In other words, there has been an even greater shift towards positive vetting. It should be noted, however, that it still falls short of the high standard of positive vetting as conducted in, for example, the intelligence community.¹⁰

1.25 Before Mr Justice Hope's reviews, ASIO routinely provided security assessments on all applicants for the armed services and for executive and clerical employment in the public service. Moreover, prior to 1986, the definition of security in the Act included protecting the nation from 'subversion'. This meant that the ASIO assessment involved a judgement of 'loyalty' against this criterion. After the Hope Commission, only those requiring access were assessed, and all cases involving an adverse or qualified assessment were guaranteed the right of judicial review by the Security Appeals Tribunal.

1.26 The recurring themes of the Hope Commission's reviews of security assessment are still relevant:

- that the number of positions requiring clearance be reduced to the essential minimum;
- that the ASIO role be strictly 'security' related, in the form of advice to the agency head and only provided at the request of the agency head;
- that the ultimate responsibility for granting access was that of the agency head;
- that an agency bears primary responsibility for vetting on all aspects other than 'security';
- that vetting for access is a personally intrusive process and, in the interests of civil liberties, should be restricted to essential cases only; and
- that the process should be subject to judicial review.

The Committee examines these themes in the remainder of this report.

¹⁰ Evidence, p 40.

Chapter Two

The role of ASIO in security assessment

Introduction

2.1 The terms of reference require the Committee to examine the role of ASIO in giving security assessments and not the entire access suitability checking system. But the Committee must examine ASIO's role in its proper context. To this extent, a review of the whole process is unavoidable. As Mr Justice Hope said in RCASIA:

In inquiring into ASIO's role, I have found it necessary to consider the whole system of clearance by Commonwealth bodies of staff or other people requiring access to such information or areas. ASIO's security assessments form a significant part, but not the whole, of that system. What ASIO does cannot be fully understood, or reviewed in a meaningful way, without examining the system of which it forms a part.¹

2.2 The present system is based partly on legislation and partly on administrative arrangements. The ASIO Act regulates ASIO's role and makes provision for independent review of ASIO's security assessments. What the agencies do is governed in part by the Protective Security Manual and in part by administrative arrangements made by the different agencies to discharge their role. The agencies are guided, but not bound, by the Protective Security Manual.

The requirement for security vetting

2.3 The Committee accepts that it is in the national interest to restrict access to certain places and information. This need has not been questioned at any stage in the inquiry. As the Organization noted in its submission:

the end of the Cold War did not bring an end to espionage; spying is of intrinsic value to nations and will continue;

¹ RCASIA, p 193.

economic strength has assumed even greater weight as an element in national security - economic interests have increased in importance;

other than former Warsaw Pact nations, all countries which spied on Australia before are still spying;

Australian officials posted or travelling abroad are particularly vulnerable to being approached for recruitment by foreign intelligence services;

there are continuing arrangements in place with some other countries which involve the mutual maintenance of effective security regimes;

since Federation, there has been a succession of security threats to Australia, although the level of the threat has fluctuated; and

there is a continuing need to keep potentially aggressive states ignorant of our capabilities and vulnerabilities.²

2 4 If information and areas need to be protected in the national interest it follows that access needs to be controlled. Security classifications have no meaning without controls on access. The physical and administrative arrangements to protect such material are futile without an effective screening process. The Committee endorses these views, having concluded that the national interest requires a restriction of access to certain places and information.

Material requiring protection

National security material

2 5 National security material is defined as material dealing or associated with the protection of Australia's security, defence, international relations and national interests (including economic and other matters vital to Australia's stability and integrity).³ Four levels of national security classification are defined in the Protective Security Manual (PSM). They are defined in terms of the damage that would be inflicted on Australia's national security in the event of an unauthorised disclosure.⁴

² Evidence, pp S33-S34.

³ Protective Security Manual (PSM), paragraphs 3.8-12.

⁴ Evidence, p S30.

2.6 The PSM also sets out guidelines for handling the four levels of classified material. For three of them it advises that such material should be made available only to people holding the requisite national security clearance. Three categories of national security clearance, CONFIDENTIAL, SECRET and TOP SECRET, are defined, corresponding to three levels of national security classification and indicating the level of material to which subjects may have access. A fourth category of clearance, SECURE AREA, allows entry to places which are controlled on national security grounds. It is equivalent to a CONFIDENTIAL clearance. The remaining classification, RESTRICTED, does not require a security clearance.⁵

Material classified as 'sensitive'

2.7 When the PSM was reviewed following RCASIA, a new category of clearance, not requiring an ASIO assessment, was created. A distinction was drawn between material classified on national security grounds and material for which there was a need for protection. The new designator, Positions of Trust (POT), not requiring a Part IV assessment, was created. In this 'sensitive' category there are two classes; 'PROTECTED' and 'HIGHLY PROTECTED'.⁶ Positions requiring access to national security information were to be called Designated Security Assessment Positions (DSAP).

ASIO's security assessment process

2.8 ASIO's role in access suitability checking for Commonwealth agencies is referred to as 'security assessment work'. That work forms part of the 'security clearance' process undertaken by the agencies. ASIO told the Committee that the process it follows is not a simple checking of a name against an index, but a measured judgment of the subject's suitability for access; the extent of investigation being determined by the subject's particular circumstances and the level of access required. The subject of an assessment is required to complete a security questionnaire which is passed by the submitting agency to ASIO, along with a request for an assessment. This questionnaire is intended to elicit information on the subject's activities, associates, background, beliefs and character.

2.9 There are two basic questionnaires, a shorter version for candidates for CONFIDENTIAL and SECURE AREA access and a longer version for SECRET and TOP SECRET access. Examples of these questionnaires, which are classified Staff-in-Confidence when completed, are at Appendix C. The Part IV assessment is done in accordance with the ASIO Procedures Manual: Personal and Protective Security, Part 2, Security Assessments which focuses on the areas of activities of the person under assessment, associates, attitudes, background and character of the person.

⁵ PSM, paragraph 5.71, Evidence, p 61.

⁶ PSM, paragraph 5.72, Evidence, pp 61-63.

2.10 On receipt of a request for a security assessment, the following steps are taken by ASIO:

- ASIO's registry checks the subject and other people identified in the security questionnaire against the Organization's security database. Any traces are marked on the forms. These together with any traces are forwarded to ASIO's Security Assessment Branch;

- one of the processing officers in the Security Assessment Branch examines the subject's questionnaire together with any traces to determine if the responses indicate any aspect of the subject's activities, associations, background, beliefs or character that might give rise to concern. Security concerns range from current involvement in activities prejudicial to security (eg being an agent of a hostile intelligence service), to having vulnerabilities that might be exploited by unauthorised persons to gain access;

if appropriate, the processing officer initiates checks with cooperating foreign authorities to determine if they hold any information relevant to the subject. If no cause for security concern is found a non-prejudicial assessment is issued;

if a cause for concern is identified, the case is given to an assessing officer who:

- initiates any investigative activity that might help resolve the concern, including researching ASIO's records, making inquiries of other relevant agencies and if necessary using ASIO's intelligence collection resources to obtain more information on the subject; and
- may arrange for the interview of the subject to attempt to test the veracity of the ASIO information.

if a particular vulnerability has been identified, the assessing officer:

- may give the subject a briefing on security awareness designed to sensitise him or her to the requirements of security and to help in identifying any security problems that might arise; and
- makes an assessment of the subject's suitability for access from a security viewpoint. The assessment is passed for decision to the necessary level of ASIO management.⁷

⁷ Evidence, pp S30-S32.

2.11 Provision is made in subsection 39(2) of the ASIO Act, for ASIO to give an agency 'preliminary advice' in cases where some detriment to the public interest is anticipated from the granting of access. This provides advance warning to an agency.

Evidence to the Committee

2.12 The Committee considered the issue of whether ASIO is the appropriate agency to have the responsibility of doing the security assessment work involved in the clearance process. ASIO described its role in the process to the Committee:

- ASIO exists to obtain, correlate and evaluate information about all sources of activity liable to prejudice national security, and to advise government in respect of security;

- ASIO has a unique security database and records system that can be readily interrogated, against which the names of people proposed for access can be reliably checked for traces of security significance;

- under section 19 of the ASIO Act, ASIO is authorised to liaise with foreign security and intelligence agencies, thus enabling checking of people who have lived overseas for significant periods of time; and

- ASIO has considerable experience, expertise and a broad perspective in preparing security assessments and determining the security risk arising from particular sets of personal circumstances.⁸

2.13 The Committee invited comment on ASIO's submission and on the terms of reference of the review. There was generally strong support for the role of ASIO in the process and acknowledgment of the efficiency and speed with which the Organization performed that role. A representative sample of responses is outlined in the following paragraphs.

2.14 The Attorney-General's Department commented on the collapse of ideological competition from the former Soviet Union and suggested that this had reduced the level of threat from traditional forms of espionage.⁹ More specifically, the submission suggested that the part of the security assessment for which the Commonwealth agencies were now responsible was becoming more important than the Part IV procedures. On the evidence of available statistics and information provided by departmental security officers, the Attorney-General's Department concluded that the ASIO security assessment was now a small part only of the assessment process and that few security clearances are denied because of ASIO

⁸ Evidence, pp S34-S35.
⁹ Evidence, p 89.

security assessments. Where agencies deny clearances it is almost exclusively because of adverse general suitability factors which have been uncovered through their own inquiries, checks and interviews'.¹⁰

2.15 The National Crime Authority in its submission referred to industrial espionage and said that it was 'reasonably satisfied with the current procedures', although it noted some criticisms of ASIO for not providing information on some persons who were cleared.¹¹ The Department of Primary Industries and Energy (DPIE) was concerned about the protection of Australia's trade and commercial secrets. It submitted that Australia's future as a trading nation is very much involved with world economic activity and by performance in the Asia-Pacific region. DPIE has extensive liaison with Australian commercial/economic issues. It has a need for security vetting of staff working in these sensitive areas, including an ASIO assessment. DPIE submitted that the ASIO assessment was particularly important when staff were being recruited from overseas and expressed concern that 'uncheckable background' was not being reported by ASIO (see paragraphs 2.31 to 2.39).¹²

2.16 Other agencies either expressed themselves satisfied with the current arrangements or argued for a reduced role for ASIO. The Civil Aviation Authority for instance noted that it had not received an adverse or qualified assessment. It suggested that agency heads might be able to issue preliminary clearances, subsequently advising ASIO, who would then respond where a matter of concern existed. The Civil Aviation Authority added that the procedures outlined in the PSM were being reviewed to reduce the complexity and duplication of information sought. It submitted that a single document that is the subject of progressive processing by a series of relevant agencies may now be more appropriate.¹³

2.17 The Department of Defence advised the Committee of its current satisfaction with ASIO's role:

In the past there have been questions relating to whether degrees of emphasis in ASIO targeting accurately reflected Defence concerns about potentially hostile countries.

In May 1990 Defence arranged for a senior ASIO officer to be seconded to head the Defence Security Branch. There is also a Defence Security Branch junior officer (currently an Army captain) seconded to ASIO, working in an area which concentrates on Defence security concerns ... [These] measures, coupled with significant

10 Evidence, p 40.
 11 Evidence, p S17.
 12 Evidence, pp S10-S15.
 13 Evidence, p S5

changes to the international scene, have had the effect of refocussing ASIO's targeting to better meet Defence concerns.¹⁴

2.18 The Public Sector Union (PSU) expressed itself satisfied with ASIO's role in the present system. The submission supports the present arrangements for limiting the nature and form of security assessment that ASIO can issue. It regards this as a necessary privacy safeguard. It too expressed some concern that commercial, scientific, trade and other material might not be adequately protected, but it did not see an enhanced role for ASIO in providing that protection.¹⁵

2.19 The Committee concludes that the appropriate balance has been achieved between the security assessment role of ASIO and the access suitability decision-making role of agencies. ASIO should continue to have the responsibility of security assessment and advice, including advice to government on the physical protection of scientific, technical and economic information. Decisions on clearance for access should remain with the agencies.

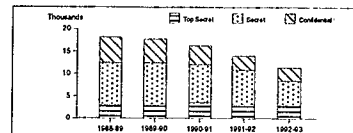
The efficiency of ASIO's security assessment process

2.20 In its *Report to Parliament 1992-93*, the unclassified version of its annual report to the Attorney-General, ASIO tabulates the numbers of requests for access security assessments for 1992-93 and the preceding four reporting periods, in both tabular and graphic form, which are reproduced below:

Table 1: Requests for 'access' security assessments, 1988-89 to 1992-93

Level of access sought	1988-89	1989-90	1990-91	1991-92	1992-93
CONFIDENTIAL	5 354	4 954	3 662	3 734	3 180
SECRET	9 342	9 116	8 570	6 803	4 955
TOP SECRET	3 363	3 571	3 812	3 528	3 237
Totals	18 059	17 641	16 044	14 065	11 372

Figure 1: Requests for 'access' security assessments, 1988-89 to 1992-93



14 Evidence, p S8.
 15 Evidence, pp 5-18.

2.21 ASIO comments that the downward trend in requests for assessment is a continuing reflection of the effect of the creation of the 'Position of Trust' designation in 1991, an access category to which officials can be appointed without the provision of a security assessment. Of the 11 372 assessments conducted in 1992-93, one adverse security assessment was issued, and no qualified assessments were made.¹⁶

2.22 In its evidence to the Committee, ASIO referred to the 1991-92 total of 14 065 assessments. Nearly 87% of these were completed in 10 working days with only 1.7% taking longer than 12 weeks to complete. Reasons for the delays in the other cases were not caused by administrative delays in ASIO.¹⁷

2.23 ASIO told the Committee that the reasons for the delay in the latter group were varied. In some cases the subject was unavailable for interview. In others, the submitting agency or department was slow to provide the information required by ASIO to finalise the assessment. In a few cases the delays were caused by the intrinsic difficulty of resolving security concerns regarding the subject while ensuring he or she received fair treatment. No delays were caused by administrative problems within ASIO. No excessive delays were caused by waiting for overseas checking, because provisional assessments are issued when overseas checks are outstanding for more than a reasonable time. Delays only occur where there are real security concerns or unavoidable delays. ASIO alleges that some departments use ASIO as an excuse to cover their own delays when responding to inquiries from the assessment subjects:

We have repeatedly received complaints direct from people undergoing a security clearance who have been told by their agency or department that ASIO is delaying the processing of their clearance. On investigation we have invariably found either that no assessment has yet been requested or that the submitting body had long since been given a completed assessment.¹⁸

2.24 ASIO recommends that the problem so far as it exists could be overcome by agencies using the probationary and provisional transfers or promotion provisions of the Public Service Act to permit temporary access to confidential level.¹⁹ ASIO has also submitted that the Committee should consider the introduction of provisional clearances to be granted by submitting authorities after a specified period without ASIO advice.²⁰ The Committee agrees with this proposal.

¹⁶ Australian Security Intelligence Organization, Report to Parliament 1992-93, pp 29-30.

¹⁷ Evidence, p S36.

¹⁸ Evidence, p S36.

¹⁹ Evidence, pp S36-S37.

²⁰ Evidence, p S48.

Recommendation 1

2.25 The Committee recommends that to overcome the problem of delays in completing the security clearance process, submitting authorities should be able to issue provisional clearances after a specified period without ASIO advice.

Communication with agencies - the problem of the qualified assessment

2.26 ASIO is limited in the manner in which it may communicate with the agencies seeking its advice. It may communicate in only one of the three forms of assessment: non-prejudicial, adverse or qualified. Where the advice is clear as in the case of the first two named there is not a problem. Non-prejudicial clears the subject in respect of security concerns, adverse gives reasons for advising against the access sought. Qualified assessments do, however, cause problems. ASIO acknowledges the problem in its submission:

ASIO has received clear signals from the submitting agencies indicating they have difficulties with qualified assessments.

ASIO uses qualified assessments to furnish departments or agencies with information that the Organization considers would help [the agencies] decide whether and how to grant access. In some cases ASIO has passed information because it raised concerns that could lead to a decision not to grant access, and because the agency would not otherwise have been aware of this information. In other cases ASIO has used qualified assessments to advise an authority how to use a prescribed security regime to manage security concerns about a person. Qualified assessments have also been used to furnish security information that might on the face of it seem a cause for security concern but which the Organization is satisfied is not a cause for such concern. But for all this, qualified assessments have tended to be viewed by agencies and departments as a half-way house between non-prejudicial assessments (which have often been taken inaccurately to be an ASIO endorsement of the subject) and adverse assessments. In this view, ASIO is informing the submitting body that there is cause for security concern, but not seeking to resolve that concern by further advising the agency or department not to grant access.²¹

²¹ Evidence, p S38.

2.27 ASIO also pointed out that qualified assessments had been poorly received by those assessed who had interpreted them as prejudicial, even in cases where ASIO had specifically said that it did not want to recommend against access. ASIO sees this difficulty of being overcome by introducing a new category of assessment, Non-Prejudicial With Advice, which would indicate that ASIO has information about the subject but does not wish to recommend against access. It would leave the qualified category for cases where there were security concerns not grave enough to warrant an adverse assessment.

2.28 This does not appear to the Committee to resolve the problem. ASIO itself acknowledges this:

To be realistic, however, any new category of security assessment that enabled ASIO to pass information on the subject of a security assessment to the submitting authority is likely to be poorly received by some of those being assessed. Any information conveyed by ASIO would be open to interpretation by the subject as prejudiced, unless a satisfactory solution could be found to counter the general perception that the communication of any information by ASIO is liable to be prejudicial to the subject.²²

2.29 The Attorney-General's Department was not supportive:

... [T]his would be too close to the existing 'qualified security assessment' category for it to be readily assimilated into the administration of security clearances without causing confusion in an already complex area. It may also be seen as a way of qualifying an assessment without attracting the established rights of review.²³

2.30 Neither ASIO nor the subject of a security assessment has any control over the way security advice is interpreted by the heads of agencies. There is no way of knowing what weight is given to it by the agency head. Accordingly, the Committee concludes that where ASIO tenders advice to an agency it should continue to do so in the form of a 'qualified assessment'. The Committee believes that the problems that arise here are due to the limitations in the present arrangements for review by the Security Appeals Tribunal (see Chapter Four for further discussion). Nothing would be gained by changing the name or creating an additional category of advice. The Committee is opposed to any arrangement that would diminish the already limited right of review.

²² Evidence, p 839.
²³ Evidence, p 190.

Uncheckable background cases

2.31 A particular difficulty within the category of qualified assessments arises in uncheckable background cases. The issue here is whether ASIO should issue a favourable or qualified assessment where it is not able to assess all aspects of a subject's background.

2.32 Decisions by the Tribunal between 1980 and 1984 tended to support the then policy of ASIO of issuing qualified assessments in all cases of uncheckable background, reporting to the agency the fact of the uncheckable background but leaving it to the agency to evaluate the importance of the absence of information.²⁴ Following Tribunal decisions in 1984²⁵ (which held that ASIO was only justified in issuing a qualified assessment where it could attach some cogency to the absent information), ASIO ceased to issue qualified assessments in all cases of uncheckable background.

2.33 The Attorney-General's Department submitted that ASIO should issue this advice to alert the agency to the need to pursue its own enquires. It submitted that agencies were entitled to be informed where the ASIO advice was based on incomplete information. There would otherwise be a danger that the agency would be given a false perception by the apparently favourable ASIO security assessment. The Committee noted, however, that ASIO had stressed that a non-prejudicial assessment was not an endorsement of the subject. The Attorney-General's Department believes that ASIO should advise agencies of gaps in its ability to check background, but should not be forced to the requirement to issue qualified assessments in these cases. The ASIO Act should be amended to make this clear.

2.34 ASIO told the Committee that in responding to the decisions of the Tribunal, it discontinued its practice of issuing qualified assessments in uncheckable background cases and, instead, assumed the practice of conducting extended security interviews and security awareness briefings with the assessment subject in those cases. This has led some agencies to complain that non-prejudicial assessments in such cases were misleading. ASIO's views on this and other aspects related to uncheckable background are summarised in the following paragraphs.

2.35 Overseas checks are only one element of a security assessment; the other elements of an assessment are applied even for subjects, part of whose background is uncheckable. If the subject has lived in Australia for some years and has not come to security notice, the inability to check in his or her country of origin may not be of much concern. Recent past experience is likely to be a better indicator of the future than is the more distant past. But having said this, it should be recognised that some authorities do request assessments for people who have lived in Australia for a very little time, and who in some cases are not even Australian citizens.

²⁴ Evidence pp 37-38.
²⁵ Evidence p 38.

2.36 The level of threat and vulnerability associated with an uncheckable background varies from country to country. Uncheckability is not the most significant factor. Of greater importance is where the uncheckable period was spent, when it occurred, and what the subject was doing there. Security judgements on the weight to be given to these factors are made by ASIO in the light of its professional expertise and these contribute to the final assessment. Submitting authorities do not have access to ASIO's security database or expertise in interpreting the significance of an overseas background.

2.37 The ability to check an overseas background does not of itself guarantee that the check is of any value. ASIO is able to check with many foreign services but the reliability and timeliness of that checking varies widely. Consequently, ASIO does not treat all checks equally. Those from countries with reliable services operating with due regard to democratic and human rights are given much more weight than those from countries with different standards under these headings. In preparing an assessment ASIO looks at the whole person; an overseas check is merely one aspect of this.

2.38 There is, finally, the question of how an agency reacts to knowledge of ASIO's inability to check. In a number of cases, the Tribunal has noted that the significance of uncheckability varies, and that ASIO should only disclose uncheckability if an agency head might reasonably regard it as a sufficient reason to deny clearance. ASIO itself sees little merit in advising of an inability to check background, unless that inability is a cause for legitimate security concern.²⁶

2.39 The difficulty with qualified assessments (whether they relate to uncheckable background or not), is that advice is going to an agency head which clearly has security significance. If it lacks this significance then it is improper of ASIO to transmit it. Thus, it seems to the Committee that ASIO is quite correct in its *approach of not transmitting information to which it can attach no security significance* and this includes uncheckable background information. Of particular concern, however, is the fact that the Tribunal has inadequate jurisdiction in regard to how the agency head interprets a qualified assessment. It has no jurisdiction to review the decision; it can only review the advice. The Committee considers this issue further in Chapter Four.

²⁶ Evidence, p 840.

Chapter Three

The role of the agencies

3.1 An agency head has the final responsibility for the consequences of an access decision, not only for the agency but for national security and frequently for the protection of information supplied in confidence by allies. As Mr Justice Hope observed in his second Royal Commission:

Thus the individual Minister, through his agency head, bears the ultimate responsibility for protective security within his area. As part of this responsibility, it is appropriate that the agency head, rather than an outsider, should decide whether a person for whom the agency has, or will assume, a responsibility is to be given access to sensitive information or areas.¹

The procedures

3.2 The security clearance process outlined in the Protective Security Manual is the guide followed by agencies. The manual is a composite document covering physical and administrative protection of Commonwealth information and assets as well as defining the processes and procedures to be followed in vetting individuals for access.²

3.3 Through a process of checks, interviews (where necessary) and collection of relevant information, agencies corroborate the identity and background of the subject of assessment and make an informed assessment of the suitability or potential vulnerability posed by character, values and circumstances in so far as they may be relevant to the person's suitability for a clearance. This process goes beyond the basic pre-employment inquiries conducted by recruitment and personnel areas. Agencies are subject to the requirements of the *Privacy Act 1988* in relation to this process.

3.4 The process involves:

a check on eligibility for employment to determine whether a subject

¹ RCASIA, p 197.
² Evidence, pp 43-93.

satisfies nationality and other criteria for Commonwealth employment;³

an identification of personal background through interviewing and the collection of personal information;⁴

a character assessment based on an evaluation of an individual's reliability and loyalty, from the checks of identity, background, personal values and behaviour, including police checks;⁵ and

an agency evaluation which determines whether to cease all clearance action or proceed with an ASIO security assessment.⁶

The extent of security checking

3.5 As outlined earlier, the total number of security assessments undertaken by ASIO has shown a steady decline in recent years. But ASIO's involvement is only one part of the clearance process, with larger agencies, such as the Department of Defence and the Department of Foreign Affairs and Trade undertaking significant numbers of security related interviews. The Privacy Commissioner gave evidence, for example, that the Department of Defence conducts about 17 000 security interviews a year in relation to checking applicants for 'positions of trust'. Clearly, the extent to which agencies classify positions as designated security assessment positions or positions of trust will determine the degree and extent of agency involvement in the sensitive and personal issues involved in security clearance.

3.6 The Committee received evidence from a number of sources that widespread over-classification of positions is still a problem, notwithstanding the downward trend in the numbers of ASIO security assessments conducted. The Attorney-General's Department reported continuing expressions of concern at the number of government positions requiring the occupants to have a national security clearance.⁷ In its evidence to the Committee, ASIO agreed that over-classification was a serious problem. It resulted in more people than necessary having access and thus more clearance activity than is strictly needed. This increased costs and took information out of the public arena that should be available to the public. The problem remained despite efforts on the part of many agencies to reduce the quantity of classified material.⁸

³ Evidence, p 65.

⁴ Evidence, p 65.

⁵ Evidence, p 71.

⁶ Evidence, pp 71-72.

⁷ Evidence, p 41.

⁸ Evidence, p S36. For example in the Department of Foreign Affairs and Trade Administrative Circular Number 55 of 1992 dated 26 June 1992, the Departmental Secretary, Dr Peter Wilenski introduced new procedures to ensure the proper

3.7 In its submission to the inquiry, the Public Sector Union (PSU) shared ASIO's concern at the extent of over-classification of positions and the consequent extension of intrusive security checking. It cited cases involving the Australian Taxation Office and the Federal Airports Corporation, in which the union negotiated a reduction in the number of positions requiring clearance. It supported the annual reporting by agencies of the number of positions requiring clearances. The PSU submission also highlighted the absence of an appeal mechanism for agency decisions on security (as opposed to the Part IV assessment undertaken by ASIO) - this aspect is explored further in Chapter Four.⁹

3.8 The submission by the Attorney-General's Department suggested that one means of reducing the number of security assessments may be to adopt a policy of 'user pays', that is for ASIO to charge for security assessments. It recognised some dangers in this approach, commenting that the introduction of such a policy 'may induce managers to do away with checks that should be made in order to save money'.¹⁰ ASIO responded strongly on this issue, saying that effective security procedures would be at risk, that security assessed positions 'may be changed or done away with to reduce Departmental costs. This is not a satisfactory outcome'.¹¹ The Committee agrees with this view.

Recommendations

3.9 The Committee recommends that:

Recommendation 2

Commonwealth agencies be required to include the following information in their annual reports:

- the number of designated security assessment positions;
- the number of positions of trust;
- the number of security assessments completed;
- the number of assessments involving denial of access, including reasons, for both designated security assessment positions (based on a Part IV assessment) and positions of trust (not based on a Part IV assessment).

classification of documents based on his concern at 'the degree of incorrect classification and, in particular, over-classification in the Department'.

⁹ Evidence, pp 13-17.

¹⁰ Evidence, p 41.

¹¹ Evidence, p S62.

The Committee also recommends that:

Recommendation 3

There continue to be no charge levied by ASIO for conducting Part IV assessments.

The intrusive nature of agency checking

3.10 The Protective Security Manual (PSM) makes explicit the responsibility of an agency head to be satisfied as to an applicant's trustworthiness, reliability, loyalty, maturity and character. This agency head must ensure that 'sufficient checks/inquiries have been made for an adequate period of time in order to make an informed and reasoned assessment' and that 'where doubts do exist on the balance of probability they do not represent a risk to the granting of access'.¹²

3.11 Considerable concern at the intrusiveness of this process was expressed in evidence to the inquiry. The Public Sector Union, for example, concluded that the process involved 'a considerable invasion of personal privacy, and that the evaluation of answers is subject to the personal discretion of those doing the assessment. It also appears that the emphasis is still mainly on issues like political activity and sexuality'¹³ A witness from the Attorney-General's Department agreed that the process was intrusive, but that:

.. security clearance processes throughout the world are privacy intrusive. I suppose for that matter getting a bank loan is privacy intrusive as well. When we were producing the PSM ... we did consult with all the people who would have a view on privacy including the ACTU and the Privacy Commissioner. While I am not sure that they would tick every full stop and comma that is in the PSM, there are no major hiccups.¹⁴

3.12 The Committee was particularly concerned to explore this aspect of the inquiry and to examine the extent to which the intrusive nature of the process may itself act to deter suitable applicants for positions. As ASIO itself acknowledged, people may fear a qualified or adverse assessment, and some of them may be dissuaded from applying for positions requiring a security clearance because of the need to go through the assessment process.¹⁵

¹² PSM, p 117.
¹³ Evidence, p 12.
¹⁴ Evidence, p 196.
¹⁵ Evidence, p S37.

3.13 The Committee examined this issue at length with the Privacy Commissioner, Mr Kevin O'Connor, who submitted that security vetting, positive or negative, was a highly intrusive process:

Individuals must provide detailed personal information in a questionnaire and/or interview. These details are then checked against information held by other agencies - including the police and in some cases, ASIO, to confirm the details provided and/or ascertain if there is other relevant information. In some cases, personal information about third persons, such as spouse or other relatives, is collected and checked: this often occurs without the knowledge or involvement of these third parties. In such cases, the issue arises as to whether these third persons should be made aware that information about them is being recorded and given the opportunity to comment; and whether their consent is sought before any checks are carried out.¹⁶

3.14 The relevant privacy principles require that information should only be collected where it is relevant to a lawful purpose of the agency, up to date and complete and that the process of collection is not unreasonably intrusive. Mr O'Connor added that while these are broad principles, underlying them are important themes such as the notion that the gathering practices should be disciplined and focused and designed to minimise intrusiveness.¹⁷ He stressed that there needs to be a strong case for the use by governments of systematic, privacy intrusive practices involving the collection of information from large populations. He noted that while classifying information and restricting access to it to designated persons is the conventional way of reducing risk of unauthorised disclosure, there is an alternative approach. He submitted that the risk involved can be adequately guarded against by on-the-job assessment and on-the-job controls rather than blanket interviews and assessments requiring individuals to provide information that may not necessarily be relevant to the requirements of the position.

3.15 Mr O'Connor noted a distinction recognised by ASIO in its submission between two aspects of the risk to be guarded against - the risk of allowing access to persons who are already engaged in activities prejudicial to security and the risk associated with persons considered to be 'vulnerable' to corruption. He expressed concern at the second aspect of the risk, the processes designed to assess potential 'vulnerability'. He queried the value of the present practices of routine intrusive interviewing by agencies of all those being considered for clearances.¹⁸

¹⁶ Evidence, p 236.
¹⁷ Evidence, p 237.
¹⁸ Evidence, p 238.

It does worry me that the justification given for a lot of the intrusive questioning that goes on at the primary level and then is vetted at the secondary level - all the papers of which are kept at ASIO - is a justification based on assessment of candour and not in relation to the content of the information itself.¹⁹

3.16 He illustrated his concern by reference to the responses obtained in the audit of the Defence Department vetting practices and points to ambiguities and other difficulties involved in the processing of answers by respondents to the security questionnaire. He commented:

Assessment of an individual's 'vulnerability to exploitation' must necessarily be extremely subjective. The questioning guidelines would appear to be designed to identify aspects of a person's background which involve attitudes or activities that are regarded as not conventional. Most of the recommended questions are expressed in such a way that the interviewee would immediately detect the implicit value statement and recognise that if they disclose an 'unconventional' history or attitude they would be likely to be singled out for attention. A series of denials of 'unconventional' attitudes or activities or, at least, non-committal answers would be seen by most interviewees as being likely to be the best way to avoid difficulties. People who are frank about 'unconventional' aspects of their private lives or attitudes are, on the face of it, at greater risk of running into difficulty in their assessment (with consequential effects on their employment). When this point of view was raised with the [Defence] Department, it replied that while it had an interest in the specific answers it was normally more concerned to assess whether the individual was frank and candid in his or her responses. I doubt whether many interviewees would feel comfortable with that explanation.²⁰

3.17 The Committee shares the Privacy Commissioner's doubts in this respect and shares his further concern at the lack of special qualifications and expertise of interviewers and the sheer volume of interviews conducted and files submitted to ASIO. He concluded that a more tailored approach which would involve

a choice or combination of approaches (questionnaires, interviews and assessment by referees) may be just as effective and less resource-intensive than the present system.²¹ He commented:

I was also concerned, as I indicated in the submission, with the appropriateness of having quite junior administrative officers in agencies receive such confidential information from individuals and also the appropriateness of those people being vested with quite significant authority to assess people in respect of their behaviour, demeanour and propensity to being exploited or being a risk to the nation.²²

3.18 The Privacy Commissioner acknowledged the value of ASIO's records check but questioned the need for ASIO to review the security interview in all cases pointing out that the 'present level of ASIO review activity is driven ... by the very large number of interviews that agencies presently undertake'. If the referee based system he suggested were to replace the existing approach, 'ASIO's' involvement could then be limited to routine name checking and those cases where referee reports raise matters of potential concern.²³ He concluded by recommending:

- a review of the value and contents of the security questionnaire;
- a review of the level, qualifications and training of interviewing officers; and
- consideration of the need for an ASIO 'second opinion in every case'.²⁴

3.19 The Committee was impressed by the strength of the argument presented by the Privacy Commissioner. The involvement of third parties on issues unrelated to work performance is an unwarranted and unnecessary intrusion on personal privacy. It is insufficient to assert that an applicant for a security assessed position should be aware that the application will involve an exhaustive and intrusive checking process. To assert this is to deny the possibility that the process itself can act as a deterrent to potential applicants. The continuing trend of a reduction in the number of Part IV assessments being sought, and the minuscule number of recent adverse or qualified assessments, led the Committee to question the value of the security checking process. But the paucity of evidence outlining the numbers of agency clearances conducted, not involving a Part IV assessment by ASIO, does not permit the Committee to reach a firm conclusion. Nevertheless, the Committee shares the strong concerns expressed by the Privacy Commissioner.

¹⁹ Evidence, p 245.
²⁰ Evidence, pp 238-239.

²¹ Evidence, p 239.
²² Evidence, p 247.
²³ Evidence, p 240.
²⁴ Evidence, p 241.

Recommendations

3.20 In relation to the role of Commonwealth agencies in the security clearance process:

Recommendation 4

The Committee recommends that the Attorney-General's Department, in consultation with the Privacy Commissioner and relevant unions, review the value and content of the security questionnaire to ensure that the required information is necessary and relevant.

Recommendation 5

The Committee recommends that all security interviews within agencies be conducted by appropriately qualified, trained and experienced officers.

Recommendation 6

The Committee recommends that the Attorney-General's Department consider introducing a work-based assessment process as proposed by the Privacy Commissioner.

Recommendation 7

The Committee recommends that the Privacy Commissioner continue to undertake privacy audits of Commonwealth agencies.

Chapter Four

The right of review: the Security Appeals Tribunal

Review by the Security Appeals Tribunal

The Tribunal

4.1 The Security Appeals Tribunal (SAT) is an independent body, established by Divisions 3 and 4 of Part IV of the ASIO Act, which began operations on 1 June 1980. Its function is to review adverse or qualified ASIO security assessments. Such an assessment is one that contains 'any opinion or advice, or any qualification of any opinion or advice, or any information, that is or could be prejudicial to the interests of the person'. (The Tribunal has no power to review security assessments conducted by agencies other than ASIO; it thus has no power to review cases where individuals are refused a clearance by an agency and that refusal is not based on an ASIO assessment.)¹

4.2 The Tribunal consists of a President (who is a Judge) and a number of non-presidential members. Non-presidential members are appointed by the Attorney-General to either the general category or one of the special categories. A person appointed in the general category can not be a current member of, or have had substantial service in the Australian Public Service or the Australian Defence Force. To be appointed to the special categories, a person must be a former member of the Australian Public Service or the Australian Defence Force, a person with experience in relation to immigrants, or a person with experience in relation to employment under Commonwealth contractors. Members of the Tribunal can be appointed for periods of up to seven years, and are eligible for re-appointment. When conducting a review, the Tribunal is constituted by the President, a non-presidential member in the general category, and a non-presidential member in the relevant special category.²

4.3 Where ASIO provides a Commonwealth agency with an adverse or qualified security assessment, the agency concerned generally is required within 14 days to notify the person, give the person a copy of the assessment and inform him/her of the right to apply to the Tribunal for a review.³ A person who has

¹ Security Appeals Tribunal (SAT) Annual Report for 1992-93, p 1.
² SAT Annual Report for 1992-93, p 5
³ ASIO Act section 38(1).

received an adverse or qualified security assessment from ASIO may within 30 days of receiving notice of the assessment apply in writing to the Tribunal for a review of the assessment.⁴

The Tribunal's procedures

4.4 The Tribunal's proceedings are conducted informally, in private and as quickly as possible.⁵ The Tribunal is not bound by the technical rules of evidence but may inform itself on any matter in such ways as it thinks appropriate.⁶

4.5 The parties to a review are the Director-General of Security (DGS) and the applicant. The agency seeking the assessment is entitled to make submissions. ASIO is obliged to make available to the SAT all the relevant evidence available to it whether favourable or unfavourable to the applicant. The applicant is not entitled to be present when the Tribunal is hearing evidence from ASIO or the employing agency and ASIO and the employing agency are not entitled to be present during the evidence of the applicant to the Tribunal.⁷ Procedures allow for the Tribunal to convey relevant information and obtain responses from the various parties where their evidence has initially been heard in private.

4.6 The Attorney-General can certify that certain information should not in the public interest be released, whereupon the Tribunal, while having access to the information so certified, may not release it to the parties.⁸

4.7 After conducting a review, the Tribunal makes its findings in relation to the assessment, and those findings may express the Tribunal's view on any opinion, advice or information contained in the assessment. The Tribunal's findings are given to the parties subject to the discretion by the Tribunal to withhold particular parts on security grounds. The Tribunal provides copies of its findings to the applicant, the Director-General of Security, the relevant Commonwealth agency and the Attorney-General.⁹

4.8 A decision or finding of the Tribunal is not subject to review by any court or other tribunal. However, at any time after the completion of a review an applicant may apply to the Tribunal for a review of the findings on the ground that the applicant has fresh evidence of material significance that was not available at the time of the original review.¹⁰

4 SAT Annual Report for 1992-93, pp 1-2; ASIO Act section 55.
5 ASIO Act section 58.
6 ASIO Act section 67.
7 ASIO Act subsection 58(7).
8 ASIO Act subsection 60(1).
9 ASIO Act subsections 60(2) and 60(3).
10 ASIO Act sections 62 and 63.

Review by other means

4.9 The Protective Security Manual makes it quite clear that there is no statutory basis for the making of clearance decisions by agency heads. Likewise, 'there is no specific statutory right of appeal against a decision to deny a clearance'.¹¹

4.10 There is, however, under Division 3 of Part III of the *Public Service Regulations* a remedy available to Commonwealth employees aggrieved by a decision to refuse a clearance. This is a general right available to an employee aggrieved by action taken in relation to his/her employment and which allows the aggrieved person to request the agency that took the action to investigate the complaint. The agency must respond by giving the employee a written statement of the outcome of the investigation and must state the reason for any decision consequent upon the investigation.

4.11 An employee who remains aggrieved following an agency's internal investigation may seek an independent review by the Merit Protection and Review Agency (MPRA). Established in 1985, MPRA's objective is to ensure:

... that actions taken and decisions made in relation to a Commonwealth employee in relation to his or her employment as a Commonwealth employee are fair and equitable and are made in accordance with sound personnel management practices and with due regard to:

- (a) the efficiency of the relevant authority; and
- (b) the need to ensure good relations between the relevant authority and its employees.¹²

4.12 In its submission to the inquiry, the MPRA pointed out that, notwithstanding a perception to the contrary (despite clear indications in the Protective Security Manual), the MPRA does have a review role in relation to decisions involving security clearances. As noted in the MPRA submission:

As the final decision ... rests with [a] Departmental Secretary, rather than ASIO, all security assessment decisions relating to employees are potentially subject to grievance examination by the MPRA ...¹³

11 Evidence, p 89.
12 Evidence, p 260.
13 Evidence, p 260.

4.13 Since its inception in 1985, the MPRA has reviewed only two cases involving the refusal of security clearances. In one case, clearance had not been granted by the agency despite the issuing of a non-prejudicial (favourable) security assessment by ASIO. In both cases, MPRA reviews concluded that there was a reasonable basis for not granting clearances, but natural justice was denied by the failure sufficiently to inform the officers involved of the basis for the decisions.¹⁴

4.14 An additional means of review of security access decisions, apart from the Security Appeals Tribunal and the Merit Protection and Review Agency, arises under section 5 of the *Ombudsman Act 1976*. The Ombudsman may, in respect of personnel not already employees of the Commonwealth, 'investigate action, being action that relates to a matter of administration by an agency about which a complaint has been made ... and may of her/his own motion, investigate any action, being actions that relates to administration by an agency'.¹⁵ This avenue of review is clearly documented in the Protective Security Manual and would provide a means of review, for example, for an unfavourable clearance or access decision in respect of an employee of a contractor to the Commonwealth. The office of the Commonwealth and Defence Force Ombudsman advised the Committee that:

... our operational experience is limited in relation to the matters encompassed by the review's terms of reference ... [I]t would be usual for us to exercise the discretion we have not to investigate a matter where other alternative avenues of review are reasonably available.¹⁶

4.15 The Committee concluded that, on the evidence available to it, there had been very little recourse to avenues of review beyond the Security Appeals Tribunal. It therefore focussed its principal attention on the review work of the Tribunal.

The work of the Security Appeals Tribunal

4.16 The case load of the Tribunal is tabulated by years and by outcome in its 1992-93 Annual Report. Table 2 shows the number of applications received by year, and Table 3 shows the outcome of applications received in the period 1980-93.¹⁷

¹⁴ Evidence, p 261.
¹⁵ Evidence, p 90.
¹⁶ Evidence, p S24.
¹⁷ SAT Annual Report for 1992-93, pp 11-14.

Table 2: Applications received by year

Year	Applications Received		Total
	Qualified Security Assessment	Adverse Security Assessment	
1980-81	1	2	3
1981-82	6	4	10
1982-83	5	6	11
1983-84	7	-	7
1984-85	-	2	2
1985-86	-	-	-
1986-87	-	-	-
1987-88	-	1	1
1988-89	2	-	2
1989-90	1	-	1
1990-91	-	-	-
1991-92	-	-	-
1992-93	-	1	1
Total	22	16	38

Table 3: Outcome of Applications

Year	Applications Received 1980-1993		Total
	Qualified Security Assessment	Adverse Security Assessment	
Applications dismissed	2	5	7
Applications granted	11	8	19
Assessment justified but no grounds for denying access	3	-	3
Adverse assessment replaced by qualified assessment	-	2	2
Adjourned indefinitely or withdrawn	6	-	6
Not determined as at 30 June 1993	-	1	1
Total	22	16	38

4.17 In his annual reports for 1986-87 and 1987-88 the then President of the Security Appeals Tribunal, Mr Justice Samuels, commented on the dearth of matters reaching the Tribunal despite the very large number of assessments made by ASIO. In 1986-87 ASIO dealt with 24 475 security assessments none of which was qualified or adverse.¹⁸ Mr Justice Samuels observed that there seemed to be developing a practice by Commonwealth agencies to rely on their own security guidelines and procedures to the exclusion of references to ASIO.

4.18 In the 1988-89 Annual Report, Mr Justice Samuels expressed his concern that under the existing procedures there was a possibility that Commonwealth agencies may adopt the practice of refusing to grant security clearances without requesting an assessment from ASIO; and by that means effectively excluding any review by the Tribunal.¹⁹

4.19 In his submission to the Inquiry, the Inspector-General of Intelligence and Security reported that in 1988 his predecessor had undertaken an investigation in relation to Mr Justice Samuels' suspicions but did not reach any firm conclusions in respect of them. However, he had noted that in Canada, the United States, Britain and Denmark there was an irreducible minimum number of applications for a security clearance which drew an adverse recommendation. None of the countries the former IGIS had visited had had the experience of a year in which there was a nil return. This used to be the case in Australia, but from July 1985 adverse and qualified assessments appeared virtually to have ceased. There were none in 1985-86 there were none again in 1986-87, and in 1987-88 there was only one (and that was a result of a complaint to the Inspector-General).

4.20 The Inspector-General commented:

My predecessor noted that there might be any reason for this: ASIO might be unwilling to chance their arm before the Security Appeals Tribunal and so might not be issuing adverse or qualified assessments; security assessment standards might have dropped; departments might be taking a more active part in the security assessment process and weeding out candidates who in the old days might have been detected as unsuitable by ASIO. My predecessor's inquiries of departmental security officers produced no evidence that would have supported Justice Samuels' concerns.²⁰

4.21 The Inspector-General concluded that the Committee might wish to examine whether departments are in fact weeding out applicants and if so the basis for the rejection of those applicants so weeded out. If a refusal is based on security grounds, then an applicant should be granted access to the SAT. Alternatively, the Administrative Appeals Tribunal should be empowered to review cases where departments or agencies have declined to issue security clearances irrespective of whether or not an ASIO assessment has been issued:

...[I]f the Committee finds evidence to support Justice Samuels' concerns, then the absence of review in these cases is plainly incompatible with the legislative intention of Part IV of the ASIO Act.²¹

4.22 On the basis of the submissions of agency heads to the Committee, it seems unlikely that subjects are being refused clearances where their cases should have gone to ASIO. It seems more likely that the agency has decided not to proceed with a clearance on the grounds of general unsuitability of character and accordingly has aborted the clearance before seeking the Part IV assessment. Both ASIO and the Attorney-General's Department have noted that since the revision of the PSM and the enhanced role of the agencies where access has been denied it has been almost exclusively on character rather than security grounds. The Committee is concerned that the distinctions between being unsuitable on character grounds and being a security risk are not at all precise. The Committee concludes that by providing a right of judicial review in relation to the total process involved in the security clearance rather than simply the ASIO assessment, SAT or its successor could develop a set of principles and guidelines that would clarify the distinctions and impart some precision to the process.

Reforms to present Security Appeals Tribunal procedures

Need for a set of common principles

4.23 ASIO pointed out that under the ASIO Act there is power to make regulations (subsection 37(3)) as to the assessment process binding both on ASIO and the SAT. No regulations have yet been made. However, there is also provision in 37(4) for the Attorney-General to make determinations binding on ASIO. Such a determination has been made which binds ASIO but not the SAT. ASIO submitted that this results in misunderstanding and conflict between ASIO and the SAT.

¹⁸ SAT Annual Report for 1986-87.
¹⁹ SAT Annual Report for 1988-89.
²⁰ Evidence, p 112.

²¹ Evidence, p 113.

4.24 ASIO believes that the SAT decisions lean too far in favour of the individual and against the interest of the Commonwealth to the detriment of the proper interests of security. The various agencies also bring different approaches to the process. ASIO submitted that uniformity in applicable standards is desirable and recommended that the existing determination which binds it should be implemented as regulations binding on SAT and the agencies.

4.25 In evidence, the Attorney-General's Department rejected this approach:

In essence, ASIO argues that the Security Appeals Tribunal and submitting agencies should be bound by the same statement of principles as itself. This proposal is one on which the SAT has in the past expressed strong views. Given that the [ASIO] Act is entirely concerned with national security, it is doubtful whether any statement of principles that is expressed to be binding on the SAT would make much practical difference. Moreover, adequate protection of the individual requires that an independent review tribunal should be free to decide that the general principles under which ASIO operates may create unfairness in a particular case. If there is a problem in the quality of SAT decisions, the incorporation of the SAT into the AAT, as announced in the Government's response to the Committee's report on 'ASIO and the Archives Act' will provide the best solution. As far as submitting agencies are concerned, administrative steps could be taken to make them more aware of the principles embodied in the determination to which ASIO refers. I do not think there is any need to extend the scope of the ASIO Act.²²

4.26 The Registrar of the SAT commented that it was the view of the Tribunal that if a determination is binding on the decision-maker, then the Tribunal should also operate within the determination. If this was accepted then the determination should be issued as regulations under subsection 37(3).²³ Witnesses representing the Administrative Review Council supported this view and noted that any rules binding on both ASIO and the SAT were in the nature of delegated legislation and therefore would, as regulations, be subject to an appropriate regime of consultation, publication and parliamentary scrutiny.²⁴

4.27 The Privacy Commissioner agreed that there appeared to be a danger at present of different standards being applied by different agents in the process, namely, ASIO, the agency and the Security Appeals Tribunal. Accordingly, he

²² Evidence, pp 189-190.
²³ Evidence, p 168.
²⁴ Evidence, p 212.

supported the ASIO suggestion for a common set of guidelines binding on all participants. However, he submitted that the opportunity should be taken in devising those guidelines to review them in the light of information privacy values. He rejected the ASIO assertion that the rights of the Commonwealth should always prevail over those of the subject of assessments. He asserted that both are of fundamental concern and that a proper balance should be struck. He was of the view that the current processes may unreasonably prejudice the privacy of individuals without yielding any significant benefit to national security.²⁵

4.28 The Committee understands the reasoning behind ASIO's proposal for a common set of principles, but sees no compelling case for amending the ASIO Act. It endorses the position of the Attorney-General's Department.

ASIO's exclusion from parts of Security Appeals Tribunal hearings

4.29 ASIO argues that while it is obvious that the applicant and his/her representatives must be excluded from the hearing when ASIO is giving its evidence, there is no equivalent 'security' reason why ASIO should be excluded when the SAT is hearing evidence on behalf of the applicant. Mr Justice Hope was of that view and recommended in RCASIA that applicant's evidence should be open to ASIO. Accordingly, ASIO has recommended that subsection 58(7) of the ASIO Act should be repealed to enable it and its representatives to be present at SAT hearings of an applicant's case. The Attorney-General's Department was opposed on the ground that there would be an appearance of unfairness if ASIO's representatives were allowed to be present while the corresponding ban on the applicant and his or her representatives was maintained.

4.30 The Registrar of the SAT commented that in general all parties to a hearing should be present throughout the hearing. Provision should, however, be made for the Tribunal to order otherwise, where matters of a national security character were being dealt with. The Administrative Review Council agreed that:

subject to the SAT having a discretion to exclude one party if it considers that it is necessary for reasons of maintaining confidentiality or for reasons related to the security or defence of the Commonwealth. In this respect, the SAT should be entitled to regulate the conduct of its own proceedings.²⁶

²⁵ Evidence, p 241.
²⁶ Evidence, p 212.

4.31 The Council commented that this 'approach appears to have operated successfully in AAT hearings in matters involving ASIO'.²⁷ The Privacy Commissioner directed the Committee's attention to the RCIS recommendation that ASIO should be permitted to be present subject to a privacy test, a position which he considers appropriate.²⁸

Recommendation 8

4.32 The Committee recommends that in general all parties to a Security Appeals Tribunal hearing should be present throughout the hearing, subject to the Tribunal having the discretion to exclude one party or to use masking technology in the presentation of evidence where it considers that such a course is warranted in the national interest.

How binding are Security Appeals Tribunal findings?

4.33 ASIO drew the attention of the Committee to section 61 of the ASIO Act. It noted that an SAT decision can vary the ASIO advice, and that advice supersedes the earlier advice of ASIO to the agency; it is not clear the extent to which such a finding binds the agency head. The problem noted here is that while sections 60 and 61 of the ASIO Act require that neither ASIO nor the submitting agency can take a different view of a security assessment from the SAT, it is far from clear in practice what obligation this cast on the submitting agency. The submitting agency must comply but it can reach a decision to refuse access outside the scope of the security assessment. ASIO commented that the proposal to include the SAT in a new security division of the AAT could provide an opportunity to clarify this matter.

A right of review by the Security Appeals Tribunal

4.34 The Committee notes the proposal to incorporate the SAT into a new security division of the Administrative Appeals Tribunal. The Committee believes that this could provide an opportunity for a re-examination of the basis on which decisions concerning access can be reviewed by the SAT/AAT.

4.35 The Committee has concluded that the present arrangements for reviewing decisions to refuse access are flawed. An elaborate form of review is available under Part IV of the ASIO Act (33 of the 95 sections of the ASIO Act are devoted to the review of security assessments under the Part) which has been invoked on 38 occasions only in over a decade of operation. But the right of review

is only available in relation to one segment of the 'access suitability clearance process' – the advice of ASIO. The SAT only has the power to affect the advice that goes to the agency head. It has no ability to control or effect the decision thereafter.

4.36 The decision to refuse access whether on the basis of 'security' or general suitability grounds such as 'character' is not capable of judicial review (the grievance procedure available to a person refused access is not a form of judicial review). The Registrar of the SAT advised the Committee that he receives enquires from time to time from individuals whom he has had to advise that the processes of the Tribunal are not available to them. This was also central to the comments of Mr Justice Samuels reported earlier in paragraphs 4.17 to 4.20. The PSU has also sought through the Committee a wider basis of review of access decision affecting its members.²⁹

4.37 On balance, the Committee has concluded that the present arrangements are capable of producing an injustice, resting as they do on the uncontrolled discretion of the agency head. There is no existing mechanism to determine whether there have been injustices in the past as there are no public reporting requirements binding on the agencies in relation to their decisions on access. In the absence of a review procedure, there is no means of analysis of the exercise of discretion in this respect by agency heads.

4.38 It was noted in Chapter One that one of the reasons Mr Justice Hope gave for introducing the review by the SAT was that such a mechanism was mandated by Australia's adherence to the International Labour Organisation's (ILO) Convention 111 (*Concerning discrimination in respect of employment and occupation*) against discrimination in employment. This was at a time when ASIO's role in suitability checking was much more dominant than it is now. There is thus a possibility that the present arrangements might not now comply with the requirements of ILO Convention 111. The situation is now different from when the SAT was initially proposed by Mr Justice Hope in 1977. Then, the Part IV assessment, although only 'advice', was probably the determining factor in the agency head's decision. If, as seems now the case, the agency's role is the dominant factor, a review process that does not make the agency accountable for the decision hardly seems to provide adequate protection under the Convention.

4.39 It is acknowledged that the responsibility on the agency head in deciding whether or not to allow access is a burdensome one which should not be circumscribed unnecessarily. At the same time it has been recognised since 1979 that the process should be subject to judicial review. It follows that the review process should be an effective one covering all relevant aspects of the process including the actual decision. In particular, the distinction in the PSM between security and character elements of the assessment is strained. Denial of access on grounds of character such as vulnerability to corruption is just as much a decision about security as any other element in the process (and is regarded so by ASIO which

²⁷ Evidence, p 212.

²⁸ E. J. H. C. p 241 RCIS, Second Report, paragraph 160(v) recommended that '... the Director-General or his representative should be present when [the applicant's] evidence is being tendered, save to the extent that the tribunal otherwise directs in order to protect the privacy of the appellant or a witness ...'. The government did not accept this recommendation.

²⁹ Evidence, p 17.

examines those aspects of vulnerability in making the Part IV assessment). If as has been proposed, the SAT is absorbed into a new security Division of the AAT, the occasion would seem to be propitious to review the process so that an effective right of review is provided on all aspects of the 'access suitability assessment process'.

Recommendation 9

4.40 The Committee recommends that the process of establishing a new security division of the Administrative Appeals Tribunal should be accelerated and that provision should be made for an appeal to the Tribunal by any person aggrieved by an access decision of an agency head.


RUSS GORMAN, MP
Presiding Member

March 1994

Appendix A

Submissions and Exhibits

Submissions

Number	Name of person/organisation
1	Mr J E Cross
2	Civil Aviation Authority
3	Privacy Commissioner
4	Department of Defence
5	Department of Primary Industries and Energy
6	National Crime Authority
7	Administrative Review Council
8	Inspector-General of Intelligence and Security
9	Public Sector Union
10	Attorney-General's Department
11	Australian Federal Police
12	Office of National Assessments
13	Department of Finance
14	Commonwealth and Defence Force Ombudsman
15	Security Appeals Tribunal
16	Department of Administrative Services
17	Australian Security Intelligence Organization
18	Security Appeals Tribunal (Supplementary)
19	Attorney-General's Department (Supplementary)
20	Administrative Review Council (Supplementary)
21	National Crime Authority
22	Department of Finance
23	Confidential Submission
24	Department of Immigration and Ethnic Affairs
25	Australian Security Intelligence Organization (Supplementary)
26	Attorney-General's Department (Supplementary)
27	Privacy Commissioner (Supplementary)
28	Security Appeals Tribunal (Supplementary)
29	Merit Protection and Review Agency

Exhibits

Number	Name of person/organisation
1	Confidential Exhibit
2	From Privacy Commissioner's Office:
a.	Canadian Security Intelligence Review Committee Annual Report 1991-92.
b.	Extract from a letter from the Canadian Privacy Commissioner responding to the Australian Privacy Commissioner's request for information regarding security vetting in Canada.
c.	Papers on New Zealand security assessment procedures.

Appendix B

Public Hearings

Canberra - 12 October 1992

Attorney-General's Department

- Mr David Bell, Director, Protective Security Policy and Training
- Mr Peter Malcolm Ford, Assistant Secretary, National Security Branch
- Mr Garrett Michael Quigley, Head, Community Protection Branch, Federal Justice Office
- Mr Norman Stephen Reaburn, Deputy Secretary

Public Sector Union

- Ms Patricia Marie Ranald, National Industrial Officer

Canberra - 11 November 1992

Office of the Inspector-General of Intelligence and Security

- Mr Roger Holdich, Inspector-General
- Mr Philip Moss, Assistant Inspector-General

Canberra - 1 September 1993

Department of Immigration and Ethnic Affairs

- Mr Dario Costello, Assistant Secretary, Executive Support and Review Branch
- Mr Michael John Galloway, Acting Director, Entry Operations and Coordination Section
- Ms Sue Patricia Ingram, First Assistant Secretary, Entry Compliance and Systems Division
- Mr Frank Johnston, Acting Director, International Section, Refugee, Asylum and International Branch
- Ms Elizabeth Lloyd, Director, Personnel Practices

PERSONAL PARTICULARS FORM 1

The information you provide in this form will be used for checking action in connection with your security clearance for access to Confidential information or a Secure Area. See *Information Letter and General Consent Form for information regarding the nature of check/anquiries to be made*. The checking action will include this form being referred to ASIO.

All questions are to be answered (if not applicable, answer n/a).
*Please provide names in native script also (over), if applicable.

	Subject	Spouse/defacto/Partner Fiance(e)	Father	Mother
1.	Surname Current			
	At birth			
	Other surname(s)			
2.	Given Names			
3.	Birth Date			
	Place			
4.	Marriage Date			
	Place			
5.	Nationality Current			
	Other			
	If Naturalised Date			
6.	Place			
	Date of first arrival in Australia			
a.	Addresses Current			
	Permanent if different			
c.	Other for last 5 years			
	(If resident overseas in last 5 years, provide full addresses over)			
If deceased, please provide year of death				

7. Employment: Full particulars of current (and other) employment in last 5 years, including attending school or university and service with Commonwealth Government or Armed Forces (if latter give number and rank)

	Name of Employer	Address of Employer	Occupation	Length of Service	
				From	To
Current					
Previous					

Department of Immigration and Ethnic Affairs (continued)

- Mr Stephen James Meredith, Director, Health and Character Section
- Mr Mark Anthony Sullivan, Deputy Secretary

Security Appeals Tribunal

- Mr David Schulz, Registrar

Canberra - 29 September 1993

Administrative Review Council

- Mr Charles William Beltz
- Mr Stephen Bruce Lloyd

Attorney-General's Department

- Mr Peter Malcolm Ford, Assistant Secretary, National Security Branch
- Mr Garrett Michael Quigley, Head, Community Protection Branch, Federal Justice Office
- Mr Norman Stephen Reaburn, Deputy Secretary

Canberra - 20 October 1993

Privacy Commissioner

- Mr Kevin O'Connor

Merit Protection and Review Agency

- Ms Ann Margaret Forward, Director
- Mr Adrian Shane Rees, Senior Policy Adviser

STAFF-IN-CONFIDENCE

8. Have you previously completed security checking forms? Yes No

If Yes, please state the circumstances _____

9. Do you have any relatives, including children, living overseas? Yes No

If Yes, please provide the following details on each:

Name in Full	Relationship	Country of Residence	Dates of Residence	
			From	To

10. Are you now, or have you ever been, a member of any clubs, associations or interest groups? Yes No

If Yes, please provide the following details:

Name of Club/Association/Group	Dates of Membership		Office Held	Reason for Ceasing Membership
	From	To		

11. a. Have you ever had personal contact with an official of a foreign country? Yes No

b. If Yes, was this as a result of other than official duties with the Commonwealth? Yes No

If Yes to b, please give details:

12. a. Have you visited overseas? Yes No

b. Have you resided overseas? Yes No

If Yes to a or b, please give the following details, if not provided in question 6c:

Country	Address	Dates of Residence	
		From	To

STAFF-IN-CONFIDENCE

13. Do you have a Spouse/De Facto/Fiance(e)? Yes No

If No, please go to question 16.

If Yes, please provide the following details on Spouse/De Facto/Fiance(e):

Name in Full	Occupation

14. Has this person visited or resided overseas? Yes No

If Yes, please provide the following details:

Country	Address	Dates of Residence	
		From	To

15. Does your Spouse/De Facto/Fiance(e) have relatives residing overseas? Yes No

If Yes, please provide the following details:

Name in Full	Relationship	Country of Residence	Dates of Residence	
			From	To

16. Are there persons over 18 years residing with you, other than those named above? Yes No

If Yes, please provide the following information:

Name in Full	M/F	Date of Birth	Place of Birth	Relationship	Occupation

17. Have any of these persons over 18 years, currently residing with you, visited or resided overseas in the last 5 years? Yes No

If Yes, and their particulars do not already appear on this form, please provide the following details:

Name in Full	Country of Residence	Dates of Residence	
		From	To

STAFF-IN-CONFIDENCE

18. Is there any information which could be relevant to your suitability for work involving access to Confidential information or a Secure Area?

Yes No

If Yes, please give details:

19. Do you wish to discuss any of the information you have provided with this agency?

Yes No

I certify that to the best of my knowledge and belief the information given in this form is correct and complete and that I will notify the Agency of any material changes.

_____/_____/_____
Signature Date

Witnessed by:

_____/_____/_____
Name in Block Letters Signature Date

STAFF-IN-CONFIDENCE

Question No.	Continuation of Answer

PERSONAL PARTICULARS FORM 2

The information you provide in this form will be used for checking action in connection with your security clearance for access to Secret or Top Secret information. See Information Letter and General Consent Form for information regarding the nature of check/enquiries to be made. The checking action will include this form being referred to ASIO.

All questions are to be answered (if not applicable, answer n/a).
 *Please provide names in native script also (over), if applicable.

	Subject	Spouse/default/Partner Fiance(e)	Father	Mother
1.	Surname Current			
	At birth			
	Other surname(s)			
2.	Given Names			
3.	Birth Date			
	Place (city & country)			
4.	Marriage Date			
	Place			
5.	Nationality Current			
	Other			
	If Naturalised Date			
	Place			
	Date of first arrival in Australia			
6. a.	Addresses Current			
	Permanent if different			
c.	Other for last 5 years (If resident overseas in last 5 years, provide full addresses over)			
	If deceased, please provide year of death			

7. Employment: Full particulars of current (and other) employment in last 10 years, including attending school or university and service with Commonwealth Government or Armed Forces (if latter give number and rank)

	Name of Employer	Address of Employer	Occupation	Length of Service	
				From	To
Current					
Previous					

8. Have you previously completed security checking forms? Yes No

If Yes, please state the circumstances _____

9. Do you have any relatives, including children, living overseas? Yes No

If Yes, please provide the following details on each:

Name in Full	Relationship	Country of Residence	Dates of Residence	
			From	To

10. Are you now, or have you ever been, a member of any clubs, associations or interest groups? Yes No

If Yes, please provide the following details:

Name of Club/Association/Group	Dates of Membership		Office Held	Reason for Ceasing Membership
	From	To		

11. a. Have you ever had personal contact with an official of a foreign country? Yes No

b. If Yes, was this as a result of other than official duties with the Commonwealth? Yes No

If Yes to b, please give details:

12. a. Have you visited overseas? Yes No

b. Have you resided overseas? Yes No

If Yes to a or b, please give the following details, if not provided in question 6c:

Country	Address	Dates of Residence	
		From	To

STAFF-IN-CONFIDENCE

13. Do you have a Spouse/De Facto/Fiance(e)? Yes No

If No, please go to question 16.
If Yes, please provide the following details on Spouse/De Facto/Fiance(e):

Name in Full	Occupation

14. Has this person visited or resided overseas? Yes No

If Yes, please provide the following details:

Country	Address	Dates of Residence	
		From	To

15. Does your Spouse/De Facto/Fiance(e) have relatives residing overseas? Yes No

If Yes, please provide the following details:

Name in Full	Relationship	Country of Residence	Dates of Residence	
			From	To

16. Are there persons over 18 years residing with you, other than those named above? Yes No

If Yes, please provide the following information:

Name in Full	M/F	Date of Birth	Place of Birth	Relationship	Occupation

17. Have any of these persons over 18 years, currently residing with you, visited or resided overseas in the last 5 years? Yes No

If Yes, and their particulars do not already appear on this form, please provide the following details:

Name in Full	Country of Residence	Dates of Residence	
		From	To

STAFF-IN-CONFIDENCE

18. Is there any information which could be relevant to your suitability for work involving access to Secret or Top Secret material? Yes No

If Yes, please give details:

19. Do you wish to discuss any of the information you have provided with this agency? Yes No

I certify that to the best of my knowledge and belief the information given in this form is correct and complete and that I will notify the Agency of any material changes.

_____/_____/_____
Signature Date

Witnessed by:

_____/_____/_____
Name in Block Letters Signature Date

Question No.	Continuation of Answer

Reference:

Financial Questionnaire/Declaration

NOTES

The prerequisites for employment in this agency include verification as to trustworthiness, reliability, loyalty, maturity, (financial) probity and character suitability.

In particular, experience has shown that an adverse state of indebtedness, financial obligation or other pecuniary difficulty can increase a person's vulnerability to coercion or temptation. A favourable assessment of your financial status is therefore essential to your prospective (or continued) access to classified information, valuable assets, or to a specified secure area. Ultimately it may affect your employment with this agency.

To enable this agency to undertake an assessment of your financial status you are required to complete the attached Financial Questionnaire. It is not our wish or practice to acquire more detail about your financial affairs except where doubts or questions arise in the course of the examination of your Financial Questionnaire. Should this occur, you may be asked to:

- (a) provide further details (eg. statements of income and expenditure, assets and liabilities); and/or
- (b) sign a release form authorising this agency to conduct enquiries with banks, building societies, credit unions and other with whom you have financial dealings.

An alternative to (a) and (b) is for you to nominate an independent financial referee (eg. a Bank Manager or professional Financial Adviser) who can attest to your financial position, provided we can be satisfied that the referee has the necessary information and expertise to enable an informed and objective judgement to be made about your financial status.

Some questions in the Financial Questionnaire refer to a partner which could include your spouse (including a de facto or like relationship), other relative, business associate or any other person with whom you share financial arrangements and/or responsibilities.

If insufficient space to answer questions below please use attachment(s)

1. Indicate the gross annual income, from all sources and to which you have access, of you and any partner*:

up to \$20,000 <input type="checkbox"/>	\$50,000 to \$60,000 <input type="checkbox"/>	\$100,000 to \$120,000 <input type="checkbox"/>
\$20,000 to \$30,000 <input type="checkbox"/>	\$60,000 to \$70,000 <input type="checkbox"/>	\$120,000 to \$140,000 <input type="checkbox"/>
\$30,000 to \$40,000 <input type="checkbox"/>	\$70,000 to \$80,000 <input type="checkbox"/>	\$140,000 to \$160,000 <input type="checkbox"/>
\$40,000 to \$50,000 <input type="checkbox"/>	\$80,000 to \$100,000 <input type="checkbox"/>	more than \$160,000 <input type="checkbox"/>

2. Indicate the range of average annual expenditure of you and any partner*:

up to \$20,000 <input type="checkbox"/>	\$50,000 to \$60,000 <input type="checkbox"/>	\$100,000 to \$120,000 <input type="checkbox"/>
\$20,000 to \$30,000 <input type="checkbox"/>	\$60,000 to \$70,000 <input type="checkbox"/>	\$120,000 to \$140,000 <input type="checkbox"/>
\$30,000 to \$40,000 <input type="checkbox"/>	\$70,000 to \$80,000 <input type="checkbox"/>	\$140,000 to \$160,000 <input type="checkbox"/>
\$40,000 to \$50,000 <input type="checkbox"/>	\$80,000 to \$100,000 <input type="checkbox"/>	more than \$160,000 <input type="checkbox"/>

3. Have you or a partner* ever been insolvent or been declared bankrupt? Yes No
 If Yes, please provide details:

4. Has any business or commercial enterprise in which you or a partner* have been involved ever gone into receivership or a similar scheme or arrangement? Yes No
 If Yes, please provide details:

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5. Have you ever defaulted on a loan, been refused credit or had banking (including building society or credit union) facilities withdrawn or restricted? Yes No
If Yes, please provide details:

6. During the last ten (10) years, have you or a partner* been the subject of a court order in connection with monies owing to another party? Yes No
If Yes, please provide details:

7. Please estimate the total equity you and your partner* have in your major assets: \$ _____

8. Are there any factors which have affected your financial status? (Examples could be significant bequest or lottery win or, conversely, financial responsibility for the care of an invalid relative or maintenance payments) Yes No
If Yes, please provide details:

9. Are there any other financial circumstances which may be relevant to the assessment of your suitability for a security clearance? Yes No
If Yes, please provide details:

10. Do you wish to discuss any aspect of this form with a representative of the Security Branch/Section? Yes No

Declaration

I declare that the information provided in this form and any attachments (which must be signed and dated) is true and correct to the best of my knowledge.

Name in Block Letters

Signature

____ / ____ / ____
Date

Notes

The agency may wish to discuss with you aspects of the details provided in this form and any attachments, and make additional enquiries to corroborate information, or to resolve doubts or anomalies. However, enquiries will be made only with your permission.

* A partner may be a spouse, other relative, friend or business associate with whom you share financial arrangements and/or responsibilities which affect your income, expenditure, investments etc.