THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

SENATE

SECURITY OF CRITICAL INFRASTRUCTURE (CONSEQUENTIAL AND TRANSITIONAL PROVISIONS) BILL 2017

SUPPLEMENTARY EXPLANATORY MEMORANDUM

Amendments to be Moved on Behalf of the Government

(Circulated by authority of the Minister for Home Affairs and the Minister for Immigration and Border Protection, the Honourable Peter Dutton MP)
Amendments to the Security of Critical Infrastructure (Consequential and Transitional Provisions) Bill 2017

(Government)

OUTLINE


The amendments proposed to be moved by the Government to the Bill would implement recommendations made by the Parliamentary Joint Committee on Intelligence and Security in their report on the Bill dated 15 March 2018.

The amendments would make a technical correction to ensure that any ASIO adverse security assessment made in connection with a Ministerial directions power at clause 32 of the Security of Critical Infrastructure Bill 2017 would be subject to notification requirements under section 38A of the ASIO Act, rather than section 38. This will ensure that there is no Ministerial power to withhold the notice from the assessed party.

FINANCIAL IMPACT

There is nil financial impact associated with the Bill or these amendments.
NOTES ON AMENDMENTS

Amendment 1  
Schedule 1, page 3 (after line 10), after item 1 – 1A Section 38A (at the end of the heading)

1. This amendment inserts the new words, ‘or directions under the Security of Critical Infrastructure Act’ to the end of the heading at section 38A of the ASIO Act. This ensures the heading for section 38A of the ASIO Act accurately reflects that the section will also apply where an adverse security assessment relates to the directions power at clause 32(2) of the Security of Critical Infrastructure Bill 2017, in addition to (as currently drafted) ‘[n]otification where assessment relates to Telecommunications Act’.

Amendment 2  
Schedule 1, page 3 (after line 10), after item 1 – after subsection 38A(1)

2. Where an adverse or qualified security assessment is made in respect of a person (for purposes connected with certain provisions of the Telecommunications Act), section 38A of the ASIO Act requires the Attorney-General, within 14 days of receiving the assessment, to give the assessed person a notice in writing, including a copy of the assessment and information on his or her right to seek merits review. The Attorney-General may not withhold such a notice, but may redact any part of the assessment, the disclosure of which, he or she is satisfied would be prejudicial to the interests of security.

3. This amendment inserts new subsection 38A(1A) after subsection 38A(1) in the ASIO Act to ensure that the notification requirements in section 38A (outlined above) also apply to an adverse security assessment given in connection with clause 32(2) of the Security of Critical Infrastructure Bill. This amendment aligns the notice requirements of an adverse security assessment relating to the directions power in the Security of Critical Infrastructure Bill with those provided in relation to similar directions powers in the Telecommunications Act.