

Parliamentary Joint Committee on Intelligence and Security

Review of the National Security Legislation Amendment (Comprehensive Review and Other Measures No. 2) Bill 2023

Questions on Notice from hearing on 11 April 2023

Questions on Notice

Mr WALLACE: ... For the purposes of the record, for the bill review, can you outline the history and justification behind the convention of not undertaking investigative action on NIC agencies? Why was this not rectified in legislation earlier?

Mr Anderson: The Hope royal commission looked at the question of ASIO. My understanding is that the amendment to the Ombudsman Regulations that ASIO should be carved out was a recommendation of the Hope royal commission. In terms of the other agencies being set up over time and the IGIS itself being set up in 1986, the IGIS has basically a different suite of capabilities to my office. My office is primarily set up to deal with complaints from the public about the broad range of government departments and agencies, whereas the IGIS is a much more specialised agency, and so the IGIS has the specialised capabilities that go with that. Its staff typically have higher levels of security clearance and its facilities are cleared to a higher level as well, so it's better placed to hold higher classified intelligence and information and to access those. It's really a recognition of that.

In terms of why it hasn't previously been dealt with formally, that I don't have an answer for. I've only been in the role for eight months. I could come back to you on that if necessary, Deputy Chair, but I don't have an answer for that, other than to say that we've had an MOU with the IGIS since 2014 and that's been working, in our view, very satisfactorily.

Mr WALLACE: Thanks for that offer, Mr Anderson. We might take you up on that, if you would like to provide that as a question on notice.

The Office of the Commonwealth Ombudsman's response

The Commonwealth Ombudsman would like to clarify his response during the hearing to the first of Mr Wallace's questions. The removal of ASIO from the Ombudsman's jurisdiction was not a recommendation of the Hope Royal Commission, although it was noted by the Hope Royal Commission. The Royal Commission on Australia's Security Intelligence Agencies ('the second Hope Royal Commission') recommended the establishment of the Inspector-General of Intelligence Services to oversight security intelligence agencies, including ASIO. In making this recommendation, Justice Hope noted that ASIO was not subject to external review of its administrative actions. Justice Hope noted "In particular (and for reasons which I fully understand), the Ombudsman does not have jurisdiction in respect of ASIO..."¹ In recommending that an Inspector-General be set up, Justice Hope said that, when handling complaints about ASIO, "The Inspector-General would in this respect perform a function comparable with that performed by the Ombudsman in relation to most Commonwealth authorities."²

The second part of this question has been accepted as a Question on Notice by the Attorney-General's Department, who are better placed to advise the Committee on Government decisions with respect to the timing of legislation.

¹ Royal Commission on Australia's Security and Intelligence Agencies: Report on the Australian Security Intelligence Organization. December 1984. Australian Government Publishing Service, Canberra. Paragraph 16.78. Available online: <https://catalogue.nla.gov.au/Record/7831295?lookfor=author:%22Royal%20Commission%20on%20Australia%27s%20Security%20and%20Intelligence%20Agencies%22&offset=6&max=11>. At paragraph 16.78, page 329.

² At paragraph 17.68, page 354.