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The Hon Dan Tehan MP
Chair
Parliamentary Joint Committee on Intelligence and Security
Parliament House
CANBERRA ACT 2600

Dear Mr Tehan

PJCIS review of AIC finance and administration FY 2012-13

Thank you for your letter of 20 December 2013 inviting me to make a submission to the Parliamentary Joint Committee on Intelligence and Security review of the administration and expenditure of intelligence and security agencies for the financial year 2012-13.

The inspection and inquiry activities of the Inspector-General of Intelligence and Security (IGIS) are focused on the operational activities of the AIC agencies rather than their administrative and financial activities. Nevertheless, issues of an administrative or financial nature do, from time to time, arise during IGIS inspection and inquiry activities. I note that the overall rate of administrative errors identified by my office is low, particularly in the areas of warrants and ministerial authorisations. It is in this context that the following comments are submitted. Background information on the role, functions and focus of the IGIS is included at Attachment A.

Recordkeeping and source referencing in assessments

During 2012-13 I conducted an inquiry into the analytic independence of ASIO, DIO and ONA. While the overall findings of the inquiry were positive, the inquiry found inconsistent recordkeeping and source referencing in ASIO and DIO. A lack of adequate records makes it difficult for these two agencies to consistently demonstrate that their assessments are free from interference or bias. DIO was due to implement a new electronic intelligence production system in July 2013. Provided that the new system is consistently utilised to capture records in the way in which it has been designed, there should be a significant improvement in DIO recordkeeping. As a result of the inquiry ASIO developed a new policy on referencing and has made improvements to electronic records systems to make it easier for analysts to consistently record supporting documentation.

Personnel, recruitment and vetting in the AIC

The IGIS has limited jurisdiction in relation to employment related grievances in DSD, DIGO, DIO and ONA. However the IGIS does investigate ASIO and ASIS related employment matters. A number of administrative issues were identified in ASIO's handling of a withdrawal of the security clearance of an ASIO employee. Although I found that the withdrawal of the security clearance was not inappropriate I made three recommendations about ASIO's staff management processes. Two related to classified security vetting and risk management matters and the third related to the creation and retention of performance appraisal records for ASIO staff.

Delay and administrative deficiencies

In 2013 I looked into an anonymous complaint about a lack of action by ASIS management into a number of allegations of misconduct. Concerns about the issue had been raised with senior ASIS managers when the first of the alleged incidents occurred in late 2010 and again in April 2012. My inquiries prompted ASIS to expand their investigation and by the end of the 2012-13 financial year all matters had been finalised. I informed ASIS that I was concerned about lapses of proper administration demonstrated by senior managers. In particular, their failure to keep proper records led to uncertainty about personnel responsibilities, and their failure to follow up meant these matters were not resolved at the time they were first raised. I note that if this complaint had been made under the recently introduced public interest disclosure scheme ASIS would have had three months from the time the original allegations were made to finalise its investigation.

During inspections of ASIS ministerial authorisations my office identified that, contrary to legislative requirements, the Minister for Foreign Affairs was not always promptly informed when the grounds for a ministerial authorisation had ceased to exist. A similar issue arose with ASIO in 2011-12 but I am satisfied that new processes implemented in 2012-13 have addressed the problem. There were also two occasions where ASIS did not report to the Minister on activities carried out under an authorisation within the required three month period.

There were a relatively small number of errors relating to the execution of ASIO warrants. Some of these errors could be attributed to ASIO while others were the responsibility of the relevant telecommunications carrier. ASIO errors of an administrative nature included typographical errors and identification of an incorrect service. Appropriate remedial action was taken.

The *Anti-Money Laundering and Counter Terrorism Financing Act 2006* (AML/CTF Act) provides a legal framework in which designated agencies are able to access and share certain financial intelligence. The Act imposes various administrative obligations on agencies. During inspections conducted in 2012-13 I found that in 2011-12 ASIS had been deficient in some of its obligations under the AML/CTF Act. I was also concerned about administrative processes in ASIS for the management of AUSTRAC material. ASIS have advised me that they have updated their procedures to ensure compliance with the legislation. ASIO was generally compliant with AML/CTF Act obligations, but did not comply with AUSTRAC's guidelines on storage. ASIO has since obtained a waiver from ASUTRAC for the storage requirements.

Further information

I hope that the information provided in this submission is of some assistance to the Committee. Should you require clarification or additional information with respect to any of the above, I would be pleased to provide it.

Yours sincerely

Dr Vivienne Thom
Inspector-General

20 February 2014

Attachment A

Role, functions and focus of the IGIS

The position of the Inspector-General of Intelligence and Security (IGIS) was created by the *Inspector-General of Intelligence and Security Act 1986* (the IGIS Act), which came into effect on 1 February 1987.

The IGIS is an independent statutory office holder who reviews the activities of the agencies which collectively comprise the Australian Intelligence Community (AIC). The IGIS has own motion powers in addition to considering requests from ministers or complaints.

The Office of the Inspector-General of Intelligence and Security is situated within the Prime Minister's portfolio. The office is currently resourced for 12 staff.

As an independent statutory office holder, the IGIS is not subject to general direction from the Prime Minister, or other Ministers on how responsibilities under the IGIS Act should be carried out.

The role and functions of the IGIS are set out in the IGIS Act. The Act provides the legal basis for the IGIS to conduct regular inspections of the AIC agencies and to conduct inquiries, of varying levels of formality, as the need arises.

The overarching purpose of these activities is to ensure that each AIC agency acts legally and with propriety, complies with ministerial guidelines and directives, and respects human rights. The majority of the resources of the office are directed towards on-going inspection and monitoring activities, so as to identify issues, including about the governance and control frameworks within agencies, before there is a requirement for major remedial action.

The inspection role of the IGIS is complemented by an inquiry function. In undertaking inquiries the IGIS has strong investigative powers, akin to those of a royal commission. Inquiries are conducted in private because they almost invariably involve highly classified or sensitive information, and the methods by which it is collected. The public ventilation of this material could be potentially harmful to those persons involved in its collection, or compromise collection methodologies, neither of which would serve the national interest.

Although the primary focus of the IGIS relates to the activities of the AIC agencies, the IGIS Act was amended in November 2010 so that IGIS inquiries (at the direction of the Prime Minister) can include intelligence or security matters relating to *any* Commonwealth agency. This provision was used in 2012-13 to initiate an inquiry into the matter of an Egyptian irregular maritime arrival who was the subject of an Interpol red notice. That inquiry looked at actions of the Australian Federal Police, Immigration and ASIO.

The IGIS also has a role in providing expert evidence to the Administrative Appeals Tribunal and the Information Commissioner in relation to certain archives and freedom of information cases.

Further information can be found at www.igis.gov.au