



Inspector-General of
Intelligence and Security

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

Dear Mr Byrne

PJCIS review of AIC finance and administration FY 2011-12

Thank you for your letter of 23 August 2012 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 2011-12.

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. 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

For proper accountability it is essential that intelligence officials record the reasons for decisions that they make. This is particularly important for decisions that are high risk or can have a significant impact on individuals. A requirement to document reasons also helps to ensure that the decision maker has considered all relevant factors and arrived at a defensible decision. Even though intelligence and security related decisions are often not reviewable by the courts they can be scrutinised in the course of an inquiry or by an oversight body. Government-wide and agency-specific policies, not surprisingly, require records of the reasons for decisions to be made. I am well aware that some decisions need to be made quickly and that the tempo of intelligence and security work is often rapid. However, this does not make recordkeeping discretionary. Records of important meetings and decisions, even brief records, still need to be made and retained.

During 2011-12 I found that good records were kept for some types of decisions but not for others, including for some decisions with potentially very significant impacts on individuals.

- During my inquiry into ASIO's security assessments for community detention determinations I identified deficiencies in recordkeeping and circumstances where it was not easy to follow the decision-making pathway in respect of individual cases. For example, in one case a recommendation against community detention was made because of an administrative error but the error was not identified for two months. In this case the individual may have been kept in an immigration detention centre longer than necessary. One of the recommendations of this inquiry related to ensuring that records of decisions for security assessments are clear and unambiguous, explicitly setting out what decision has been made, by whom and the basis for the assessment. I was advised that ASIO agreed with the recommendation and I plan to conduct follow-up inspections of ASIO's implementation in the current financial year.
- The review of documentation associated with requests from ASIO to the Attorney-General for warrants to intercept telecommunications and to exercise other special powers was an area of particular focus for IGIS inspection in 2011-12. The records relating to warrants were generally of a high standard and a relatively small number of errors were identified. There were a number of cases where the Attorney-General was not notified 'forthwith' that the grounds for a warrant had ceased as required by the legislation, however ASIO did promptly cease intelligence collection and the notification issue has since been resolved by a change in administrative practices.
- My office also regularly inspected ASIO internal approvals for the initiation of investigations and for requests for access to telecommunications and financial data during 2011-12. While most approvals to initiate investigations complied with policy and legal requirements there were some that lacked detail or were poorly expressed. A recurring issue with data requests was a failure by some staff to subsequently record a decision about the relevance of data that had been obtained.
- Ministerial Authorisations that allow ASIS, DSD or DIGO to collect intelligence on Australian persons were regularly inspected by my office in 2011-12. While occasional minor clerical errors were identified none of these affected the validity of the authorisations and the general standard of the records was high. Similarly, records relating to the application of the rules to protect the privacy of Australian persons were sound.

Communication between ASIO and DIAC

In 2011-12 I received 430 complaints about visa security assessments, most concerned with delays. This was a decrease from the 1111 received in 2010-11. In 2011-12 my office generally only looked into cases that were over 12 months old. As the Australian National Audit Office was conducting an audit of ASIO's security assessment process, I suspended my regular inspections of ASIO's case management and quality control processes. While the incidence of error by ASIO was low some administrative issues of concern, particularly around communication between ASIO and DIAC, did arise:

- In response to a complaint about excessive delay it was ascertained that a handling error had resulted in a visa security assessment being cancelled. Upon discovery of this ASIO finalised the assessment and sent a formal apology to the complainant.
- ASIO identified that DIAC had sent 43 referrals for visa security assessments to an incorrect ASIO electronic mailbox. Five of these were more than 12 months old. ASIO

took action to prioritise these cases and implement technical and procedural changes to minimise the risk of recurrence. My office continues to oversight the management of ASIO's security assessment 'electronic monitor boxes' as part of our regular inspection program.

- In response to a complaint referred to me by the Commonwealth Ombudsman it was identified that the case pre-dated the DIAC-ASIO electronic referral system implemented in 2009. In its search to find information about this case ASIO identified a number of other incomplete security assessments from the same period. ASIO took steps to finalise the cases and kept my office informed of progress in each instance.

During my inquiry into ASIO's community detention security assessments concerns about coordination and communication between ASIO and DIAC arose in several of the case studies.

At the conclusion of the inquiry I recommended that, in cases where ASIO has issued an adverse security assessment but DIAC has identified significant health, welfare or other exceptional issues, ASIO should engage in a dialogue with DIAC so that the Minister for Immigration and Citizenship could be advised on possible risk mitigation strategies and conditions with which the person might be placed in community detention. ASIO advised me that it was 'open to dialogue with DIAC should the department wish to pursue this proposal with us'. I understand that this proposal has not been pursued. I am also aware that other recent events, such as the appointment of an Independent Reviewer to review the appropriateness of adverse security assessments may have overtaken my earlier recommendation.

Personnel, recruitment and vetting in the AIC

Sections 8(5) and 8(7) of the IGIS Act limit the capacity of the IGIS to investigate employment related grievances relating to DSD, DIGO, DIO and ONA employees. However the IGIS does investigate ASIO and ASIS related employment matters and I looked into a number of such issues in 2011-12.

In 2011-12 I conducted an inquiry into a complaint about a particular recruitment action in ASIS. I found that ASIS's normal business practices in relation to recruitment are sound. However, in relation to this case the normal practices had not been followed. This caused the complainant considerable inconvenience. I made a number of recommendations about policies, procedure and training for staff involved in recruitment. These were accepted by ASIS.

I conducted a preliminary inquiry into a complaint about a decision by ASIO to terminate a person's employment. I concluded that ASIO's processes and decisions were not inappropriate in the circumstances. However in another preliminary inquiry into ASIO's internal handling of a different complaint I had concerns about the timeliness of ASIO's internal investigation. ASIO advised me that they made several changes to their internal policies and practices to address this. Processes for the termination of employment, particularly on security grounds, continue to be an area of focus for my office.

At the request of the Minister for Defence I conducted an inquiry into the mechanisms and processes for managing risk in Defence intelligence agencies in circumstances where a staff member is identified as being an actual or potential security concern. The Minister also requested me to compare the activities of the Defence intelligence agencies with the mechanisms and processes being used by the other agencies of the AIC. I found overall that the systems which operate across the AIC for managing staff risk meet the minimum mandatory requirements of the

Australian Government Protective Security Policy Framework. I identified better practice principles which, if adopted, would serve to strengthen existing arrangements within and across the AIC agencies.

Although ASIO, ASIS and ONA were not within the scope of the inquiry, I provided these agencies with my views on their compliance with the better practice principles articulated in my report.

Administrative support arrangements

In 2011-12 ASIO progressed its implementation of electronic document and case management. This has required fundamental changes to the way that we conduct our inspections. Resource pressures have also meant that we have moved to more of a sampling approach focussing on areas of higher risks. For ASIO, we have changed our focus from inspections of particular types of activities to looking at an investigation or operation as a whole.

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

25 January 2013

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 (OIGIS) is situated within the Prime Minister's portfolio and reports to the Special Minister of State for the Public Service and Integrity for administrative purposes.

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 not used to initiate any inquiries in 2011-12 but the Habib inquiry and Defence Security Authority inquiry that were finalised in 2011-12 were conducted under this provision.

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 in on www.igis.gov.au

