

2010/116

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The Hon Arch Bevis MP
Chairman
Parliamentary Joint Committee
on Intelligence and Security
Parliament House
CANBERRA ACT 2600

Dear Mr Bevis

PJCIS Review of AIC finance and administration FY 2008/09

I am writing in response to your letter of 29 October 2009 inviting me to make a submission to the Parliamentary Joint Committee on Intelligence and Security's (PJCIS) full review of the administration and expenditure of the six intelligence and security agencies which comprise the Australian Intelligence Community (AIC) for the financial year 2008/09.

I am pleased to accept the Committee's invitation and to this end would like to offer some general background information about the role and focus of my office, and then comment on three issues that my office dealt with in the period under review, which might be of interest to your inquiry.

All of the following information is unclassified and there are no security considerations that would prevent this submission being published, should the PJCIS wish to do so.

Role, functions and focus of IGIS

For the benefit of new members of the PJCIS, or any other persons reading this submission, 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 can employ staff to assist in the discharge of his or her functions, and the agency is referred to as the Office of the Inspector-General of Intelligence and Security (OIGIS).

The objectives of the IGIS Act and the role and functions of the IGIS are set out under sections 4, 8, 9 and 9A of the IGIS Act.

Briefly summarised, it is the job of the IGIS to monitor and review the activities of the six agencies which fall within the IGIS's remit, to ensure that those agencies act in a proper and ethical manner, in compliance with Australian law, and consistent with human rights.¹

The objectives of the IGIS Act are achieved through the IGIS, assisted by his or her staff, undertaking regular inspections of, and conducting inquiries into, the operational activities of the AIC agencies.

OIGIS has a rolling visits and inspection program which has been specifically tailored for each of the six AIC agencies.

The IGIS also conducts inquiries on the basis of complaints which are received from members of the public, referrals from Ministers with responsibilities for the six AIC agencies, and from time to time, on his or her 'own motion'.

The inspection and inquiry activities of the IGIS are focused on the operational activities of the AIC agencies rather than their administrative and financial activities *per se*.

While the OIGIS does not set out to inspect or inquire into matters of finance and administration within the AIC agencies, issues of this kind do from time to time inevitably come to attention. It is against this background that the following comments are submitted.

Complaints about the timeliness of ASIO security assessments

In my submission to your review for 2007/08, I advised the Committee that I had noticed a significant increase in the number of complaints made to my office from members of the public who were concerned about the timeliness with which ASIO processes security assessments in relation to visa applications.²

¹ The six agencies for which IGIS has review responsibilities are the Australian Security Intelligence Organisation (ASIO), the Australian Secret Intelligence Service (ASIS), the Defence Imagery & Geospatial Organisation (DIGO), the Defence Intelligence Organisation (DIO), the Defence Signals Directorate (DSD), and the Office of National Assessments (ONA).

² IGIS letter 2009/33 dated 6 February 2009 refers.

As the following figures demonstrate, there was a 20% decline in the number of complaints of this kind made to my office in 2008/09.

<i>FY</i>	<i>No. handled administratively</i>	<i>No. handled by means of inquiry</i>	<i>Total</i>
2004/05	17	14	31
2005/06	26	8	34
2006/07	74	2	76
2007/08	193	0	193
2008/09	155	2	157

This reduction in 2008/09 appears to have been largely attributable to work which ASIO has undertaken in conjunction with the Department of Immigration and Citizenship (DIAC) to introduce compatible systems for the electronic exchange of information which each agency requires in order to discharge its functions in this area in a timely and efficient manner.

While I appreciate that the focus of your current inquiry is on FY 2008/09, I feel that I should inform the Committee that the pattern has changed again.

In the first half of FY 2009/10 there has been a major increase in the number of complaints of this kind being made to my office, as the following figures show:

<i>FY</i>	<i>No. handled administratively</i>	<i>No. handled by means of inquiry</i>	<i>Total</i>
2009/10 (Qtr1)	71	0	71
2009/10 (Qtr 2)	226	3	<u>229</u>
			300

I should point out that not all cases which are the subject of complaint to my office are in fact with ASIO. There are a number of cases which prove not to have been referred by DIAC, while there are others which were referred but have been dealt with by ASIO before the complaint is made to my office.

It must also be acknowledged that relative to the large number of referrals made to ASIO each year, the number of complaints is not high. However, the impact on my office is significant (noting that each complaint can involve several contacts from the person concerned or the person acting on the complainant's behalf).

It is notable that a large proportion of the recent complaints come from visa applicants in one particular country, and one possibility is that some migration agents are routinely advising clients to make a complaint after a visa application is made.

However, it also seems that there has been an impact from the diversion within ASIO of resources to deal with increased numbers of irregular arrival cases. The large majority of irregular arrival cases must, under the current criteria, be assessed from a security point of view. This diversion of skilled staff to such cases is leading to delays in some other casework categories, and thus negating the processing improvements effected in 2008/09.

Archival practices

Another high volume processing challenge for ASIO is dealing with requests under the *Archives Act 1983* for access to material which falls within the “open access period” (i.e. is more than 30 years old).

ASIO has made some enhancements to its work in this area and ASIO’s 2008/09 Annual Report suggests that these have borne some fruit, although resourcing the function with appropriately skilled staff continues to be a distinct challenge.

Only one archives-related complaint was received by my office in 2009. This was a complaint from a film maker who had sought access from the National Archives of Australia (NAA), to a range of documents and cinefilm materials which had been produced by ASIO which were all more than 30 years old.³

The complainant raised concerns surrounding the adequacy of the transfer of original cinefilm footage by ASIO to inferior quality video tape and the subsequent destruction of the original cinefilm stock in the early 1990s. At the conclusion of my preliminary inquiry I agreed with the complainant that the quality of the transfer from cinefilm to video was very poor. Due to the destruction of the original cinefilm this outcome cannot now be rectified.

I noted that the destruction of the cinefilm originals occurred in advance of specific and appropriate General Disposal Authority being issued relating to the handling of records of short term value which have been copied (issued in November 1995), and separate guidelines for the environmental control, storage and handling of motion picture film and video tape (circa September 1998).

I raised with ASIO the suitability of the storage environment for the remaining cinefilm stock, and was advised in November 2009 that ASIO has now formally transferred all of its remaining cinefilm stock to the NAA for preservation and proper storage.

Looking beyond current performance, the Committee will be aware that in March 2009 the then Cabinet Secretary, Senator the Hon John Faulkner, announced the intention of

³ Section 3(7) of the *Archives Act 1983*, states that a record is in the ‘open access period’ if a period of 30 years has elapsed since the end of the year ending 31 December in which the record came into existence.

the Government to reduce the 'open access period' specified in the *Archives Act 1983* from 30 years to 20 years.⁴

There has been some debate as to whether or not this proposed reform should apply to the AIC agencies, given the security sensitivity which attaches to many of their records.

My office also has a direct interest in this question, as most of the records generated by this office relate in either a direct or indirect manner to the activities of the six AIC agencies.

Given the potentially significant security and resource implications of any changes to the 'open access period' for the AIC agencies, this is a subject which the PJCIS might wish to raise with the AIC agencies.

Organisational Suitability Assessment testing in DSD, DIGO and DIO

I commenced an inquiry into Organisational Suitability Assessment (OSA) processes used within DSD, DIGO and DIO on 5 June 2007. This inquiry was formally concluded on 15 February 2008, when I presented my report to the Minister for Defence.

The OSA was implemented as a tool for improving personnel security on the basis of a recommendation by Mr WJ Blick PSM AM in early 2000 following his investigation of the activities of a former DIO officer, Mr Jean-Philippe Wispelaere who was convicted in the United States on espionage-related offences.

The OSA consists of a battery of psychometric tests, a follow-up interview with a clinical psychologist and an assessment report. It is used in respect of existing employees as well as potential recruits. Potential recruits are still subject to security vetting by the Defence Security Authority (DSA), but the OSA had been seen as an early filter and the OSA material made available to DSA should the candidate advance to that point.

My inquiry found that the general picture of the management of OSA policies and procedures within the Defence intelligence agencies is a positive one. However, it was also evident that since introduction the OSA process had evolved to serve two separate purposes – security suitability and organisational 'fit'. The first of these purposes is seeking to ascertain if a prospective or existing employee poses a threat to security. The second purpose is to assess whether the person's attributes or skills are such that they can be expected to perform in a particular role or part of the organisation.

The blending of these purposes has the risk that neither purpose may be realised as fully as is possible, and certainly creates several procedural issues. My report recommended

⁴ Senator the Hon John Faulkner, in Cabinet Secretary/Special Minister of State Media Release 12/2009, dated 24 March 2009.

that a clear delineation be made between the security suitability and 'fit' aspects of the OSA.

Making a clear delineation should facilitate procedural improvements including in the areas of:

- informed consent
- provision of feedback and the relationship of this process to selection committee deliberations
- maintaining appropriate privacy and confidentiality, and
- portability of assessments and information sharing more generally.

It should also facilitate decision-making, validation and research.

My report also commented that emphasis should be given to portability within the AIC of security suitability assessments, as well as exchange of information regarding serial applicants.

As at 30 June 2009, nine of the 18 recommendations had been implemented, while work on the outstanding items was progressing satisfactorily.

Administrative arrangements

I trust that the information provided in this submission is of some assistance to the Committee with respect to your current deliberations.

Should you require clarification or additional information with respect to any of the above, I would naturally be pleased to provide it.

I am also happy to appear before the PJCIS if it will assist your current inquiry, or at any subsequent meeting of the Committee, should you wish to have a wider briefing on the activities of this office.

Yours sincerely



Ian Carnell
Inspector-General of
Intelligence and Security

29 January 2010