
The Parliament of the Commonwealth of Australia

Review of administration and expenditure for ASIO, ASIS and DSD

Number 3

Parliamentary Joint Committee on ASIO, ASIS and DSD

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Terms of reference

This review is conducted under paragraph 29(1)(a) of the *Intelligence Services Act 2001*:

- to review the administration and expenditure of ASIO, ASIS and DSD, including the annual financial statements (of) ASIO, ASIS and DSD.



Foreword

We are now fighting a war against terrorism. And in this new war, our safety and security depend almost exclusively on the quality, timeliness and accuracy of our intelligence.

Intelligence is no longer a contributing factor - it is the defining and central factor that contributes to military success.¹

- 1.1 It is with pleasure that I present the third review of the administration and expenditure by the Parliamentary Joint Committee on ASIO, ASIS and DSD.
- 1.2 For my colleagues and myself, the increasing workload of the Committee in the last few years is a constant reminder of the new threats to Australians and Australian interests both abroad and at home.
- 1.3 When the Committee's first report on administration and expenditure was tabled in December 2002, the war on terrorism was newly underway.² The terrorist attacks in the United States on 11 September 2001 and the tragedy of the Bali bombings of 12 October 2002 had radically transformed Australia's security circumstances. The Australian Defence Force had already fought in Afghanistan and would soon be committed as part of the "Coalition of the Willing" in Iraq.
- 1.4 At home, the Australian Government has been engaged in a comprehensive and sustained effort to strengthen domestic security arrangements. New laws have been put in place to facilitate the efforts of

1 Attorney-General, The Hon Philip Ruddock Opening Address to the Annual Conference, Australian Institute of Professional Intelligence Officers, 2002.

2 A second review of administration and expenditure focussed on agency security arrangements and was tabled in August 2003.

ASIO and the AFP to investigate and destroy terrorist groups. Since then at least one terrorist suspect has been deported from Australia. Four Australians are awaiting trial on terrorism offences. Another has been convicted.

- 1.5 Prompted by concerns about intelligence assessments of Iraq's alleged weapons of mass destruction, including a major report by this Committee tabled in March 2004, a further major inquiry into Australia's intelligence assessment agencies was undertaken at the direction of the Prime Minister by a former Director-General of ONA, Mr Philip Flood. The Government also released a White Paper *Transnational Terrorism: The Threat to Australia*, with the aim of providing the Australian public with a strategic and long-term overview of the international dimensions of the evolving terrorist threat to Australia.
- 1.6 The global threat of Islamic extremist terrorism is unlikely to dissipate at all quickly. There is no timeframe for how long the war on terrorism may last, nor is there any clear indication of how much expansion will take place within Australia's intelligence community to deal with this new, evolving but persistent threat to our nation's security.
- 1.7 As a result of these developments, Australia's intelligence agencies - their budgets, operations, administration and organisational structures - have expanded substantially. Since 11 September 2001, more than \$3 billion has been committed to security and intelligence initiatives.
- 1.8 In this environment, there are major new challenges for the agencies; not just increased operational tempo, but also expanded liaison with national and overseas counterparts, the recruiting and training of new staff, ensuring the retention of highly skilled personnel, and the crucial need to maintain core activities while being adaptable enough to focus on new threats and targets.
- 1.9 This third review of the administration and expenditure of Australia's intelligence collection agencies reflects the concern of the Committee that rapid expansion can bring with it unavoidable stresses and strains in organisations at a time when they can least afford growing pains.
- 1.10 The Committee's review focused on the areas of growth in agency budgets and sought to ascertain how processes, procedures and staff are coping with both additional resources and greater work demands.
- 1.11 The Committee's role is different in some respects from that of other parliamentary committees. Much evidence before the Committee concerning Australia's intelligence and security agencies is of a highly classified nature and protected by specific legislative provisions. Yet it is the role of the Committee, as it is the role of all Parliamentary Committees,

to examine the activities of these Executive Government agencies and inform the Parliament and thereby the people of Australia of its findings.

- 1.12 The fundamental challenge faced by this Committee is to reconcile the demands of both security and secrecy on one hand, and parliamentary and public accountability on the other.
- 1.13 The Committee has conducted its inquiries with an appropriately high degree of security and enjoys effective working relations with ASIO, ASIS, DSD and IGIS.
- 1.14 It is unfortunate, however, that at a time effective scrutiny of our intelligence agencies is perhaps most needed, this Committee, which possesses an indisputable need-to-know, is still denied access to key documentation, notably the classified annual reports of the agencies. Without access to the classified annual reports, the Committee is severely limited in its ability to provide the effective parliamentary oversight envisaged by the *Australian Security Intelligence Organisation Act 1979* and the *Intelligence Services Act 2001*.
- 1.15 It is our hope that when the next review of the administration and expenditure of ASIO, ASIS and DSD is undertaken by the Committee, it will be done with access to the information contained in the classified annual reports of all three intelligence agencies.
- 1.16 In conclusion, I would like to take this opportunity to thank past and present members of the Committee who have undertaken their duties in a most bipartisan fashion and who recognise the need to put the national interest and effective parliamentary scrutiny of highly sensitive matters before any partisan political interests. It is my sincere hope and expectation that the members of the Parliamentary Joint Committee on ASIO, ASIS and DSD will continue to demonstrate the very best practice in bipartisan parliamentary scrutiny and oversight.
- 1.17 I would also like to thank ASIO, ASIS, DSD and the Australian National Audit Office for their cooperation and all those who have contributed to this review.

The Hon David Jull, MP
Chairman



Membership of the Committee

40th Parliament

Chair Hon David Jull MP

Members	Hon Kim Beazley MP	Senator Alan Ferguson
	Mr Stewart McArthur MP	Senator Sandy Macdonald
	Hon Leo McLeay MP	Senator Robert Ray

41st Parliament

Chair Hon David Jull MP

Members	Hon Kim Beazley MP (till 14/02/05)	Senator Alan Ferguson
	Mr Stewart McArthur MP	Senator Sandy Macdonald
	Hon Duncan Kerr MP	Senator Robert Ray

Committee Secretariat

Secretary	Ms Margaret Swieringa
	Mr Quinton Clements (19/07/04 to 11/11/04)

Senior Research Officer	Ms Sonya Fladun
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Administrative Officers	Mrs Tiana Di Iulio (to 23 June 2004)
	Mrs Donna Quintus-Bosz (from 24 June 2004)



List of abbreviations

AIC	Australian Intelligence Community
ANAO	Australian National Audit Office
ASIO	Australian Security Intelligence Organisation
ASIS	Australian Secret Intelligence Service
DIGO	Defence Imagery and Geospatial Organisation
DIO	Defence Intelligence Organisation
DSD	Defence Signals Directorate
IGIS	Inspector-General of Intelligence and Security
ONA	Office of National Assessments
PBS	Portfolio Budget Statements
PJCA	Parliamentary Joint Committee on ASIO



List of recommendations

Recommendation 1 3

That the Government give consideration to alternative mechanisms to address the Committee’s concerns regarding separate financial statements by DSD which underpinned the Committee’s recommendations in the first review of administration and expenditure.

Recommendation 2 7

That the Government give further consideration to providing the Committee with the classified annual reports of ASIO, ASIS and DSD.

Recommendation 3a 17

- **The Committee recommends that appropriate legislation be enacted that would require the Auditor-General to provide the Committee with the annual audits of ASIO, ASIS and DSD and further, that there be a requirement for the Auditor-General to provide any additional information that may be relevant to the Committee’s review of administration and expenditure.**

Recommendation 3b 19

- **The Committee recommends that, in consultation with ASIO, ASIS and DSD and with the Committee, the Auditor-General should develop a rolling program of performance audits. Such a program of performance audits should provide comprehensive coverage of agency administration.**

Recommendation 3c	19
<ul style="list-style-type: none"> <p>■ In view of the special requirements relating to scrutiny of ASIO, ASIS and DSD by this Committee, the Committee further recommends that consideration be given to amendment of Section 10 of the Auditor-General’s Act to reflect the importance of the ANAO in assisting this Committee to discharge its responsibility to review the expenditure and administration of ASIO, ASIS and DSD through an ongoing program of performance audits.</p> 	
Recommendation 3d	20
<ul style="list-style-type: none"> <p>■ The Committee further recommends that appropriate legislative provision should be made to require the Auditor-General to provide the Committee with copies of classified ANAO performance audits relating to ASIO, ASIS and DSD.</p> 	
Recommendation 4	25
<p>The Committee recommends that consideration be given, as appropriate, to greater liaison between the IGIS and the Commonwealth Ombudsman (and State Ombudsman), including the development of a memorandum of understanding or protocol governing possible joint reviews of combined ASIO/police operations.</p>	
Recommendation 5	50
<p>The Committee recommends that the Government provide the Committee with a copy of the report on the outcomes of the ASIO polygraph trial as soon as it is completed.</p>	
Recommendation 6	55
<p>It is the view of the Committee that the Chair of the Committee or members nominated by the Chair should be invited by ASIO, ASIS and DSD to attend orientation sessions with new recruits thereby gaining a greater understanding of the orientation process and to provide opportunities for new recruits to be advised of the Committees role and responsibilities.</p>	
Recommendation 7	60
<p>The Committee recommends that ASIS produce an unclassified version of its Code of Conduct and that this be tabled in Parliament by the Minister for Foreign Affairs, be sent out to all ASIS applicants, and be made publicly available on request.</p>	

Recommendation 8 62

The Committee would like to encourage all intelligence agencies to undertake regular staff surveys and, if they are not already doing so, to make use of suggestions boxes that allow for anonymous feedback by staff. The Committee recommends that at each review of administration and expenditure the results of staff surveys are made available to the Committee for examination.

Recommendation 9 70

That a review be undertaken on the extent of public reporting across all the intelligence agencies overseen by the Committee.

The third review of administration and expenditure

Information is central to effective control in accountability relationships. Each kind of control depends on the availability of information to those by whom it is exercised. An individual or body can be held to account only by those who have access to relevant information on performance.¹

- 1.1 Under Section 29 of the *Intelligence Services Act 2001*, the Parliamentary Joint Committee on ASIO, ASIS and DSD has an obligation to review the administration and expenditure of ASIO, ASIS and DSD, including the annual financial statements.
- 1.2 In August 2004, the Committee conducted its third review of administration and expenditure of ASIO, ASIS and DSD.
- 1.3 The review was conducted in private with evidence being taken at hearings and through submissions from the three agencies. The Director-General of Security, Mr Dennis Richardson, the Director-General of ASIS, Mr David Irvine, and the Director DSD, Mr Stephen Merchant, all gave evidence to the Committee. The Committee also received a submission from the Australian National Audit Office (ANAO) and senior ANAO officers gave evidence at a private hearing.
- 1.4 Much of the evidence taken by the Committee at hearings and through submissions was of a classified nature and cannot be tabled in Parliament. Wherever possible, however, as much information as can be publicly reported, including agency evidence, has been included in this report.

¹ Commission of Inquiry into the Australian Secret Intelligence Service, *Report on the Australian Secret Intelligence Service*, March 1995, p.11.

- 1.5 In addition to this report tabled before Parliament, the Committee has forwarded a confidential letter to the Prime Minister in relation to a matter of concern.

The 2001-2002 Review

- 1.6 The objective of the first review undertaken by the Committee in 2001-2002 was to cover a range of issues concerning administration and expenditure and, therefore, enhance the knowledge of the Committee. The first review made the following recommendations:

Recommendation 1

That the Prime Minister create a position of efficiency adviser in the Office of the Inspector-General of Intelligence and Security.

The efficiency adviser would :

- conduct performance audits of the Australian Intelligence Community; and,
- report the findings of performance audits to the Prime Minister, the responsible Ministers and the Committee.

Recommendation 2

That the Department of Defence ensure that annual financial statements are available for DSD so that they can be audited by the Australian National Audit Office and reviewed by the Committee as required by paragraph 29(1)(a) of the *Intelligence Services Act 2001*.

- 1.7 Neither recommendation was accepted by the Government. In relation to recommendation 1, the Government responded that the creation of an efficiency adviser in the Office of the IGIS would be inconsistent with the role of IGIS, and further to this, that existing auditing and oversight mechanisms were sufficient to provide an "efficient and effective use of resources by Australia's intelligence agencies."²
- 1.8 With regard to the provision of separate annual financial statements from DSD for audit by the ANAO and examination by the Committee, the Government expressed the view that the preparation of a report of DSD's financial performance would be sufficient. The Government considered that a separate annual financial statement for DSD would entail significant accounting system-modification, indeed an independent treasury function

2 Government Response to the Parliamentary Joint Committee on ASIO, ASIS and DSD: *Annual Report 2001-2002*.

in DSD. The Government considered that this would “at most’ entail the establishment of DSD as an independent statutory agency, ‘a move the Government does not favour.”

- 1.9 While noting the Government’s negative responses, the Committee reaffirms the reasoning that lead to the two recommendations of its first review and invites the Government to consider alternative mechanisms to address the Committee’s continuing concerns regarding the assessment of agency efficiency and the preparation of a separate financial statements for DSD.

Recommendation 1

- 1.10 **That the Government give consideration to alternative mechanisms to address the Committee’s concerns regarding separate financial statements by DSD which underpinned the Committee’s recommendations in the first review of administration and expenditure.**

Scope of the third review

- 1.11 It is not possible to find an exact figure for the increased expenditure on intelligence and security by the Government since 11 September 2001, as intelligence and security responsibilities and activities fall under many categories and agencies. There is, however, no doubt that the Australian intelligence community is experiencing its most significant period of expansion since the Second World War.
- 1.12 In a radio interview on 17 March 2004, the Prime Minister announced that intelligence and security agencies would receive an extra \$400 million in the 2004-2005 budget.³
- 1.13 The Prime Minister said that this commitment would, “bring to about \$3 billion over the period of the budget forward estimates, the additional money that has been made available for security related issues” since 11 September 2001. According to the Prime Minister “we do need to commit more resources ... nothing is more important than making further resources available for security and intelligence purposes”.⁴ Considering

3 *Transcript of the Prime Minister, the Hon John Howard MP, Interview with Mr Jeremy Cordeaux, Radio 5DN, Adelaide, 17 March 2004, p.1.*

4 *Transcript of the Prime Minister, the Hon John Howard MP, Interview with Mr Jeremy Cordeaux, Radio 5DN, Adelaide, 17 March 2004, p.1.*

the large growth in intelligence related expenditure the Committee sought to examine a number of budgetary and administrative issues for ASIO, ASIS and DSD arising from the rapid growth of the agencies. The following are some of the broad issues and areas of administration examined in the course of this review.

Classified Annual Reports

- 1.14 In carrying out its review, the Committee is reliant on the ANAO's audit of the financial statements of Australia's intelligence agencies. The following report draws upon the ANAO audit of ASIO and ASIS. As a component of the Department of Defence, DSD does not prepare a separate annual financial statement for audit by the ANAO. This makes it significantly more difficult for the Committee to fulfil its obligation under the *Intelligence Services Act* to review the administration and expenditure of DSD. In addition to these audits, the Committee reviews the Portfolio Budget Statements (PBS) and other (albeit very limited) publicly available material.
- 1.15 The Committee was pleased with the cooperation it received from the agencies. The agencies and the Committee enjoy frank and open discussions during private hearings.
- 1.16 It is, however, a matter of some concern to the Committee that it has not had access to the classified reports of the agencies during this review. This concern is reinforced by Mr Flood's recent finding that:
- ..(t)he annual reports of the intelligence agencies have not been considered by the National Security Committee for the past two years, a situation that is regrettable.⁵
- 1.17 The Committee asked each of the three agencies what their concerns were in relation to the Committee having access to their classified annual reports.
- 1.18 ASIO provided the following statement:
- Copies of ASIO's classified Annual Report are made available to the Prime Minister, the Attorney-General, other members of the National Security Committee of Cabinet and to the Leader of the Opposition. On one occasion in the past ASIO has provided access to a classified Annual Report to the Chair of the PJC and to its

5 Philip Flood, *Report of the Inquiry into Australian Intelligence Agencies*, July 2004, p.53.

ranking Opposition member in the context of the PJC's report on the public reporting of ASIO's activities.⁶

ASIO notes that the PJC's responsibilities specifically go to finance and administration. It further notes that much of the classified parts of ASIO's Annual Report are operational details which are excluded from the Committee's responsibility.⁷

Further to this, ASIO commented:

Ultimately, access to the Report is a matter for the Government. ASIO would consider requests for access on a case-by-case basis but would be opposed to access by the Committee as a right, and believes that this could only be addressed through a change to legislation.⁸

1.19 ASIS stated that:

To ensure ASIS meets its obligations in reporting its activities, the ASIS annual report contains sensitive operational information is classified top secret and is copy numbered. It deals directly with the operational outputs of the Service. Provision of access to the Annual Report would not be consistent with section 29(3) of the Intelligence Services Act 2001.⁹

1.20 DSD gave evidence that they would have no objections in releasing to the Committee elements of its annual report, "relating to the administration and expenditure" of DSD, including information on:

- corporate governance;
- staffing levels; and
- total resource allocation on efforts against National Foreign Intelligence Assessment priorities.¹⁰

Further to this DSD added:

However, much of the annual report contains operationally sensitive information, the review of which is the function of the Inspector General of Intelligence and Security. The Inspector General has been furnished with a copy of DSD's annual report for 2002/2003.¹¹

6 ASIO, *Questions on Notice*, p.1.

7 ASIO, *Questions on Notice*, p.1.

8 ASIO, *Questions on Notice*, p.1.

9 ASIS, *Questions on Notice*, p.2.

10 DSD, *Questions on Notice*, p.3.

11 DSD, *Questions on Notice*, p.3..

- 1.21 The Committee accepts that the classified Annual Reports contain operational matters which are outside the responsibilities of the Committee. Nevertheless, the Committee has successfully pursued other inquiries which to varying degrees have extended to operational matters while still maintaining its main objective of providing the Parliament with effective oversight.
- 1.22 The Committee considers that the issue of its access to relevant information contained in the classified annual reports of the agencies must be addressed before the next review of administration and expenditure.

Recommendation 2

- 1.23 **That the Government give further consideration to providing the Committee with the classified annual reports of ASIO, ASIS and DSD.**

Reviews of agency expenditure by the Australian National Audit Office

- 2.1 The Committee is aware that it is not equipped to conduct a detailed examination of the financial records of ASIO, ASIS and DSD.
- 2.2 In the course of its third review of expenditure and administration, the only sources available to the Committee were the Portfolio Budget Statements (which contain only very limited, if any, detail on agency expenditure), the classified submissions of the agencies (which contain a varied but still limited amount of information), ASIO's unclassified Annual Report to Parliament and the evidence given in the Committee's hearings.
- 2.3 The Committee examined the available primary sources and questioned the agencies at some length in regard to the information that was and was not provided. Nonetheless, in discharging its responsibility to review agency expenditure, the Committee remains heavily reliant on the reporting of the Australian National Audit Office and the guarantee of the Auditor-General that the financial statements of the agencies are satisfactory and in accordance with ANAO requirements.
- 2.4 In its third review, the Committee wished to explore a number of issues in relation to the auditing of ASIO, ASIS and DSD by the ANAO. These issues related to the transparency of the agencies when being examined by ANAO and the type of audit that is conducted. At a time when the budgets of all three agencies have grown at a very rapid pace, the Committee wished to be satisfied that the ANAO is confident of its ability to monitor agency expenditure and ensure that appropriate financial controls are in place.

ANAO audits

- 2.5 Under the *Auditor-General Act 1997* (the Auditor-General Act), the Auditor-General has wide ranging powers to conduct statement and performance audits of agencies and Commonwealth authorities and subsidiaries.
- 2.6 Sections 31-33 of the *Auditor-General Act* allow the Auditor-General and the ANAO access to any documents or information required for the audit function. The ANAO has the right of access to enter and remain on any premises occupied by the Commonwealth at all reasonable times for audit purposes. The ANAO may freely search and take extracts from any records in the custody of government agencies. The Auditor-General is also able to direct a person to appear and provide evidence under oath, if required, and present any documents requested.
- 2.7 Section 36 of the Auditor-General Act requires ANAO officers to maintain secrecy regarding audit matters when they deal with sensitive information. ANAO officers dealing with Australia's intelligence and security agencies have appropriate security clearances. Section 37 of the Act gives the Auditor-General powers to decide and indeed a duty not to include sensitive information in public reports or to disclose it to the Parliament if to do so would *inter alia* prejudice the security, defence or international relations of the Commonwealth. Consequently, provisions in any legislation cannot restrict the Auditor-General from having access to data or premises in the performance of his statutory responsibilities
- 2.8 The ANAO undertakes annual audits of the financial statements of ASIO and ASIS. Annual audits are based on the agency financial statements and examine, in essence, the money coming into and going out of the agency. An audit opinion is provided on the agency statements. Annual audits also look at the internal auditing processes within the agencies and their compliance with the accounting standards set down by the Department of Finance and Administration. This type of audit focuses on expenditure rather than administration. The ANAO may also undertake performance audits of agency operations. These audits are discussed further below.

Summary of ANAO annual audits: ASIO and ASIS

Background

- 2.9 ASIO and ASIS are required to produce financial statements in accordance with the provisions of section 49 of the *Finance Management and*

Accountability Act 1997 (FMA Act) and the Finance Minister's Orders. In addition, ASIO and ASIS must give due consideration to agreements between the Minister for Finance and Administration and the Attorney-General, and between the Minister for Finance and Administration and the Minister for Foreign Affairs, respectively that provide for the non-disclosure of such information in the notes to the financial statements where disclosure would or could be reasonably expected to be operationally sensitive.

2.10 The ANAO, as the external auditor, provides independent audit reports on the financial statements of ASIO and ASIS. These reports are provided by the ANAO as part of the financial statement audit process. The reports provide ANAO's formal opinion on whether the financial statements :

- are prepared in accordance with the Agreement between the Finance Minister and the relevant portfolio Minister and the Finance Minister's Orders; and
- give a true and fair view of the matters required by the Agreement and those Orders.

2.11 Audit coverage of ASIO and ASIS consists primarily of the annual financial statement audit.

ASIO

2.12 ASIO has one outcome listed in its Portfolio Budget Statements, being:

a secure Australia for people and property, for government business and national infrastructure, and for special events of national and international significance.¹

ASIO's appropriation for 2002-2003 was \$85.675m. For 2003-04, this appropriation increased to \$95.236m.

The ANAO informed the Committee that the 2002-2003 audit of ASIO was conducted with satisfactory results and good support from ASIO's staff.² The audit highlighted four issues of significance for the attention of ASIO management. These were:

- bank account reconciliations;
- cash advance certification;
- segregation of duties in the Finance section; and

1 ANAO *Submission*, p.1.

2 ANAO *Submission*, p.2.

- currency of Chief Executive Instructions.³

- 2.13 According to the ANAO's submission to the Committee, two of these issues (bank account reconciliations and cash advance certification) had been resolved while the other two were subject to management attention as at September 2003. The Committee questioned the ANAO about the two unresolved issues and also sought further advice from ASIO. ASIO has advised that due to the relatively small size of its finance unit, there is limited capacity to adopt full-scale segregation of duties and practices.⁴ ASIO has implemented additional controls, within resourcing constraints, backed up by an internal audit program—an approach ANAO has indicated should be effective in addressing the area of concern.⁵ ASIO is currently reviewing and updating its Chief Executive's Instructions to reflect current financial management controls and related administrative practices consistent with requirements under Section 42 of the FMA Act.⁶
- 2.14 There were no other significant matters raised as part of the final audit process and an unqualified audit report was issued by the ANAO on 16 September 2003. Pursuant to section 37 (5) of the Auditor-General's Act, a confidential report on the financial statements was issued by the Auditor-General to the Attorney-General, the Minister for Finance and Administration, and the Prime Minister. This concerned a requirement under the Australian Accounting Standard for the disclosure of information that was not disclosed by ASIO. The disclosure of this information was deemed to be operationally sensitive, a view that ANAO accepted.⁷

ASIS

- 2.15 ASIS has one outcome that is to:

Enhance government understanding of the overseas environment affecting Australia's vital interests and take appropriate action, consistent with applicable legislation, to protect a particular identified interest.⁸

3 ANAO *Submission*, p.2.

4 ASIO *Questions on notice*, p.2.

5 ASIO *Questions on notice*, pp.2-3.

6 ASIO *Submission*, p.6.

7 ANAO *Submission*, p.2.

8 ANAO *Submission*, p.2.

The ASIS appropriation in 2002-2003 was \$60.3m. \$57.4m was allocated in the 2002-2003 budget and a further \$2.93m was allocated in supplementary estimates, mainly to fund counter terrorism measures.⁹

- 2.16 The ANAO provided evidence that the 2002-2003 ASIS audit was completed with satisfactory results and an unqualified audit report was issued on 27 August 2003.¹⁰ No audit issues were noted relating to the underlying control framework supporting the financial statements. However, the audit did identify a number of minor matters in relation to asset management and some scope for improvement in the area of accounting research and development expenditure that management is addressing.¹¹ The Committee questioned ASIS on the minor matters raised in the ANAO audit.

DSD

- 2.17 DSD is part of the Intelligence Output Group of the Department of Defence. As a component of a Department of State, there is no requirement for DSD to prepare a separate financial report and ANAO's submission noted that it has never separately audited the financial statements of DSD. Instead the financial operation of DSD is incorporated as part of the financial reporting of the Department of Defence. Accordingly, in undertaking the financial statement audit for the Department of Defence, the ANAO examines DSD's financial operations, but only as part of a greater whole: An '(a)udit of DSD's financial operations is broadly included in the financial statement audit of the Department of Defence.'¹²
- 2.18 As discussed in Chapter One, the Government has not accepted the Committee's recommendation that DSD produce a separate annual financial statement. In the course of their evidence to the Committee's second review, the ANAO commented as follows:

I want to pick up on the previous recommendation of this committee that the Auditor-General undertake an audit of DSD activities. On consideration, the Auditor-General was quite happy to do that if he had a formal request for the Department of Defence to do so. To date,

9 ANAO *Submission*, p.3.

10 ANAO *Submission*, p.3

11 ANAO *Submission*, p.3.

12 ANAO *Submission*, p.1.

we have not had such a request. To date, the audit of DSD is part of the Defence audit, rather than being separate activity.¹³

- 2.19 ANAO stated in their submission that over the 2002-2003 period, no issues were specifically identified that related to the financial operations of DSD.¹⁴

Difficulties in auditing intelligence agencies

- 2.20 On the 25 March 2004, senior ANAO representatives appeared as witnesses before the Committee as part of its review.
- 2.21 The Committee has expressed reservations in regards to its ability to adequately review the administration and expenditure of agencies, given the fact that the Committee does not have access to key documentation, notably the classified annual reports of ASIO, ASIS and DSD. The Committee therefore sought a guarantee from ANAO that they had full access to the accounts and relevant information held by the agencies and were confident in their audit findings.
- 2.22 In response a senior ANAO officer stated:
- If there is wholesale collusion to hide information from the auditors, it would be very difficult to say that that is not happening. I do not believe that is the case and I am quite happy that I seem to have access to the information I seek.¹⁵

The ANAO further elaborated on this assurance:

We know the amount of money that is funded by government through appropriations. We can see that flow through the bank accounts and we see that that is dispersed. If there were anything else, it would have to be some sort of very suss slush fund that does not go through normal government processes. I am not suggesting that I am hinting at that or suggesting that that is the case. I suppose that is the caveat around any comment.¹⁶

- 2.23 The Committee wished to ascertain what percentage of total expenditure is subject to ANAO audits. A witness from ANAO stated:

13 ANAO *Transcript*, p.1.

14 ANAO *Submission*, p.4.

15 ANAO *Transcript*, p.2.

16 ANAO *Transcript*, p.2.

We look at it as a global number, so all of it is subject to examination. Individual expenditure is subject to sampling, so you make sure that the processes and systems that support payments are reliable and then you look at individual payments on a statistical sampling basis. Will most payments be individually checked? Some will but most will not be.¹⁷

2.24 The ANAO auditor for ASIO was asked if he were satisfied that the agencies were handling increased funding effectively and whether that was something the ANAO examined. The auditor responded that ANAO essentially looked at what was spent and whether it was accurately recorded rather than the performance achieved through expenditure.¹⁸

2.25 The Committee was interested to know if auditing intelligence agencies presented a more complex or otherwise different task from auditing other government departments or agencies. The ANAO officers expressed the view that

To some extent we have tried to push these audits as being no different from any other audit, apart from the possibility that public reporting may be constrained for secrecy reasons.¹⁹

Further, the witness stated:

If corruption were around and if it were significant, we would want to pursue it in the same way as we would with any other agency, but the reporting may be constrained if that were deemed to be relevant by the Auditor-General. We have certainly been pushing to have total, open and free access to the audit processes but we have to think about how we would finalise them. To a large extent we have shifted ground over the last four or five years to have that sort of access, whereas previously parts were carved out that we could not look at. I am reasonably confident now that we do have that access.²⁰

2.26 The Committee asked ANAO whether the Committee would necessarily be informed if evidence of corruption or other malpractice was ever found in relation to the operations of an intelligence agency.²¹

17 ANAO *Transcript*, p.5.

18 ANAO *Transcript*, p.3.

19 ANAO *Transcript*, p.9.

20 ANAO *Transcript*, pp.9-10.

21 ANAO *Transcript*, p.10.

2.27 Section 23(1) of the *Auditor-General Act* provides that the Auditor-General may provide advice or information to a person or body relating to the Auditor-General's responsibilities if, in the Auditor-General's opinion, it is in the Commonwealth's interests to provide the information or advice. Section 25 of the *Auditor-General Act* provides that the Auditor-General may at any time cause a report to be tabled in either House of the Parliament on any matter and that the Auditor-General must give a copy of the report to the Prime Minister, the Finance Minister and to any other Minister who, in the Auditor-General's opinion, has a special interest in the report. A senior ANAO officer commented:

The formal mechanism for reporting in the Auditor-General Act is to report to the relevant minister, to the Prime Minister and, I think, to the Minister for Finance. If you have something that falls under the secrecy provision, to my knowledge there is no formal mechanism to report to this committee in that context – and I think that is where we are at the moment.²²

Further to this, the witness stated:

...as I understand it, you may be barred from seeking that information—unless one of those ministers were to advise you of that. That would be the legal construct as I understand it.²³

2.28 The Committee notes that it would presently be a matter for the discretion of the Auditor-General to provide the Committee with copies of audit reports or any other audit information relating to ASIO, ASIS and DSD, subject to “the Commonwealth’s interests”, or it would be at the discretion of a Minister of a particular agency, to pass on such information. Clearly it is in the Commonwealth’s interests to provide this information to the Committee, especially if it included any evidence of malpractice, to assist the Committee to discharge its statutory function of reviewing the expenditure and administration of ASIO, ASIS and DSD.

2.29 To avoid doubt, the Committee considers that appropriate legislative provision should be made to require the Auditor-General to provide the Committee with copies of the ANAO’s annual audits of ASIO, ASIS and DSD agencies, and any other relevant information.

22 ANAO *Transcript*, p.10.

23 ANAO *Transcript*, p.10.

Recommendation 3a

- 2.30 **The Committee recommends that appropriate legislation be enacted that would require the Auditor-General to provide the Committee with the annual audits of ASIO, ASIS and DSD and further, that there be a requirement for the Auditor-General to provide any additional information that may be relevant to the Committee's review of administration and expenditure.**

Performance audits

- 2.31 Section 5 of the Auditor-General Act defines a performance audit as a 'review or examination of any aspect of the operations' of a government agency, authority or subsidiary.²⁴

The objectives of performance auditing are twofold:

- to provide Parliament with assurance about the quality of management of public resources; and
- to assist public sector managers by identifying and promoting better management practices.

A performance audit may include a review of:

- the use of human, financial and other resources;
- information systems, performance measures and monitoring arrangements; and
- procedures followed by entities for remedying identified deficiencies.²⁵

- 2.32 The mandate for this type of audit stops short of a review of Government policy decisions. The scope of a performance audit may, however, incorporate the audit of information leading to policy decisions, an assessment of whether policy objectives have been met, and an assessment of the results of policy implementation both within the administering body and externally.²⁶

24 ANAO, *General Guidance on the Conduct of Performance Audits*, July 2003, p.1.

25 ANAO *General Guidance on the Conduct of Performance Audits*, July 2003, p.2.

26 ANAO *General Guidance on the Conduct of Performance Audits*, July 2003, p.2.

- 2.33 One of the aims of the performance audit process is to assist public sector bodies in identifying improvements to public administration.²⁷ The ANAO takes special care of information provided in-confidence, such as commercially sensitive information received during the course of performance audits.²⁸ In the course of the Committee's first review, ANAO indicated that, in 1999, ASIO was part of a general performance audit relating to the Sydney Olympic Games. These audits review how a number of agencies perform in a certain area. For example, the ANAO conducted a general performance audit relating to Internet security, and suggested potential audits relating to management of leave in the Australian Public Service, and management of internal investigations units.²⁹ It was noted by a senior ANAO witness that a performance audit was planned on the coordination of counter-terrorism. But the witness was uncertain as to the degree of involvement this audit would have with ASIO or ASIS.³⁰
- 2.34 ANAO's annual audits focus on accounting of expenditure rather than administrative efficiency and performance. In view of the current large increases in funding for ASIO, ASIS and DSD and the agencies expansion of activities, the Committee is concerned that these financial audits do not alone provide an adequate review of agency administration and expenditure. Performance audits are a potentially important means by which the Committee, and through the Committee, the Parliament and public, can be assured that the agencies are performing to high standards of efficiency and effectiveness.
- 2.35 The Committee asked ASIO whether they could foresee any difficulties in participating in an ANAO performance audit. ASIO responded:
- The Auditor-General has not previously proposed a performance audit. ASIO has employed external consultants to conduct a variety of performance-type audits in various areas, for example—Olympics preparations, T4, the recruitment process and the PM&C Implementation Review on counter-terrorism.
- ASIO would have real difficulties with the Auditor-General doing a performance audit of say, our collection capabilities, both human and technical. That is not to say that alternative arrangements,

27 ANAO *General Guidance on the Conduct of Performance Audits*, July 2003, p.2.

28 ANAO *General Guidance on the Conduct of Performance Audits*, July 2003, pp.12-13.

29 Australian National Audit Office, *Audit Work Program 2001-2002*, July 2001, pp. 92-95.

30 ANAO *Transcript*, p.5.

perhaps including the Auditor-General, could not be made, but would need to be worked through on a case-by-case basis.³¹

- 2.36 Clearly appropriate security arrangements would need to be made in relation to performance audits of intelligence collection activities and other particularly sensitive matters. The Committee can see no reason, however, why appropriate arrangements, including the preparation of classified reports, could not be made.

Recommendation 3b

- 2.37 **The Committee recommends that, in consultation with ASIO, ASIS and DSD and with the Committee, the Auditor-General should develop a rolling program of performance audits. Such a program of performance audits should provide comprehensive coverage of agency administration.**

- 2.38 The Committee notes that Section 10 of the *Auditor-General Act* provides that in performing or exercising his or her functions or powers, the Auditor-General must have regard to the audit priorities of the Parliament determined by the Joint Committee of Public Accounts and Audit and any reports made by that Committee.

Recommendation 3c

- 2.39 **In view of the special requirements relating to scrutiny of ASIO, ASIS and DSD by this Committee, the Committee further recommends that consideration be given to amendment of Section 10 of the Auditor-General's Act to reflect the importance of the ANAO in assisting this Committee to discharge its responsibility to review the expenditure and administration of ASIO, ASIS and DSD through an ongoing program of performance audits.**

31 ASIO, *Questions on Notice*, p.2.

Recommendation 3d

- 2.40 **The Committee further recommends that appropriate legislative provision should be made to require the Auditor-General to provide the Committee with copies of classified ANAO performance audits relating to ASIO, ASIS and DSD.**

Other issues

- 2.41 The ANAO noted that Senate Order for Department and Agency Contracts requires FMA agencies to list details of certain contracts on the Internet and indicate, among other things, whether any of the contracts listed contain confidentiality provisions.³²
- 2.42 It was noted by ANAO that ASIO and ASIS have not listed their contracts on the Internet because of national security concerns. In the interest of accountability, the ANAO, as part of its next audit of compliance with the Senate Order, will examine ASIO and ASIS contracting practices for compliance with all legislative and policy requirements. This examination will not be publicly reported as it will contain classified information.³³

32 ANAO *Submission*, p.5.

33 ANAO *Submission*, p.5.

Oversight by the Inspector General of Intelligence and Security

For the effective protection of the rights of the government the Parliament and the people of Australia, we need an effective IGIS.¹

- 3.1 As Mr David Irvine, the Director-General of ASIS observed in evidence to the Committee above, the Inspector-General of Intelligence and Security is a key accountability mechanism. The office of the IGIS is intended to provide independent assurance that Australia's intelligence agencies act legally, with propriety, under ministerial direction, and with regard to human rights.²
- 3.2 The Committee considers that its own work and that of the IGIS, while separate, are complementary and should be mutually reinforcing. The Committee is determined to build an effective and cooperative relationship with the IGIS. The Committee's own inquiries provide an independent check on the nature of the relationships between the IGIS and the Australian Intelligence Community.

Background

- 3.3 The office of the IGIS was established by the *Inspector-General of Intelligence and Security Act 1986*. The IGIS oversees the entire Australian Intelligence Community (AIC) which comprises ASIO, ASIS, DSD, ONA, DIO and DIGO. The IGIS does not have formal responsibilities, however, in relation to other agencies which are involved in security and intelligence

1 *Transcript*, p.7-8.

2 Inspector-General of Intelligence and Security, *Annual Report, 2000-2001*, p.1.

activities, for example the Australian Federal Police which is overseen by the Commonwealth Ombudsman.

- 3.4 The IGIS conducts inquiries in response to a complaint or a reference from a Minister. In addition, the IGIS can 'also act independently to initiate inquiries and conducts regular inspections and monitoring of agency activities.¹³ The IGIS has significant inspection powers which include 'requiring the attendance of witnesses, taking sworn evidence, copying and retention of documents and entry into an agency's premises.¹⁴ The IGIS produces an Annual Report that includes details of complaints and referrals received during the reporting year. In addition, the report dedicates a separate section to each of the agencies which examines their performance relating to their obligation to act legally and with propriety and to comply with guidelines and directives.
- 3.5 The Office of the IGIS is quite small. At present, in addition to the Inspector-General himself, it has only four staff, one of whom is part-time. The role of the IGIS does not include conducting efficiency audits of the agencies. For example, the IGIS does not conduct audits of the agencies focusing on whether the agencies are using their resources and delivering programs efficiently and effectively.
- 3.6 In March 2004, Mr Bill Blick retired as Inspector General and Mr Ian Carnell was appointed to the office by the Prime Minister on the 23 March 2004.⁵ The Committee met informally with the Mr Carnell on 13 May 2004 to welcome him to the position and for preliminary discussions on the role of his office and the role and activities of the Committee. The Committee was pleased that Mr Carnell offered to meet on a quarterly basis throughout the year or additionally if required to update the Committee on matters arising within the Australian Intelligence Community.
- 3.7 It is anticipated that Mr Carnell will brief the Committee more fully for the next review of administration and expenditure. In view of his recent appointment as IGIS, the Committee did not feel it appropriate to request greater input from Mr Carnell at this stage for this review.

Issues from the IGIS Annual Report

- 3.8 During the course of the Committee's review, a number of complaints examined and documented by the IGIS in his unclassified Annual Report
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3 Inspector-General of Intelligence and Security, *Annual Report, 2000-2001*, 2001, p. 1.

4 Inspector-General of Intelligence and Security, *Annual Report, 2000-2001*, 2001, p. 1.

5 *Press Release by the Prime Minister*, 23 March 2004.

for 2002-2003 were also examined by the Committee. The methods by which the IGIS oversees agency operations were also discussed.

Complaints against ASIO

- 3.9 During 2002-2003 the IGIS dealt with 32 complaints about ASIO without proceeding to conduct a preliminary inquiry. Four outstanding matters were carried over from the previous reporting period. The IGIS conducted preliminary inquiries into 19 new complaints about ASIO, an inquiry into whether Australia's intelligence agencies (which included ASIO) had any warning of the Bali bombings and another preliminary inquiry which also involved approaching each agency.⁶
- 3.10 A preliminary inquiry allows the IGIS to conduct a quick review of a complaint, to determine whether the issues raised fall within the jurisdiction of the IGIS and to address complaints where the use of formal powers is considered unnecessary. A full inquiry allows the IGIS to use the complete range of statutory powers under the IGIS Act.
- 3.11 ASIO was asked about the nature of complaints made about ASIO which were examined by the IGIS in 2002-2003. Mr Richardson assured the Committee that these complaints were of a relatively minor nature. One of the more serious matters examined by the IGIS was a mistake made by officers concerning the entry of premises not specified on a search warrant.⁷ In this case the IGIS concluded that, while the error was unintentional, the search was nevertheless unauthorised.
- 3.12 The IGIS also reported that a number of other people whose residences ASIO searched complained about various aspects of the searches. The IGIS noted that when conducting an overt search under warrant ASIO obtains assistance from the Australian Federal Police and State police, principally at the start of the search, to gain entry to the premises and ensure that risks to persons involved in the search are minimised. In doing this, although acting under the authority of a warrant issued to ASIO and with the benefit of ASIO intelligence about the risks, the police use their own judgement about the techniques to use.⁸
- 3.13 The IGIS noted that a good number of the complaints about conduct related to an incident alleged to have occurred at the initial stages of searches and appeared to be about police behaviour. The IGIS therefore encouraged complainants in such cases to exercise their rights to have police behaviour reviewed. The Commonwealth Ombudsman became

6 IGIS *Annual Report 2002-2003*, p.18.

7 *Transcript*, p.57.

8 IGIS *Annual Report 2002-2003*, p.19.

involved in investigations under the *Complaints (Australian Federal Police) Act 1981*.

- 3.14 While agreeing that the approach adopted by the IGIS has been appropriate, the Committee is concerned that complainants raising concerns about combined ASIO/police operations may be left with the impression of buck-passing between jurisdictions and complaint authorities.
- 3.15 Given the potential for complaints about overt searches to generate adverse community reactions with negative implications for cooperation with ASIO and the police, it is important that ASIO and the police be seen to be fully accountable for the conduct of combined activities.

Recommendation 4

- 3.16 **The Committee recommends that consideration be given, as appropriate, to greater liaison between the IGIS and the Commonwealth Ombudsman (and State Ombudsman), including the development of a memorandum of understanding or protocol governing possible joint reviews of combined ASIO/police operations.**

Alleged bugging of a federal politician

- 3.17 The Committee asked about the alleged bugging of a federal politician, a matter that was investigated by the IGIS.
- 3.18 The IGIS conducted an inquiry into the alleged bugging of the Hon LJ Brereton MP's communications during the investigation into leaks of classified material relating to East Timor in 1999-2000. Allegations made in news outlets suggested that DSD may have cooperated with overseas agency to monitor the Member's communications.⁹ The IGIS found that DSD had not engaged in interception activities directed against Mr Brereton or provided access to the capabilities of overseas organisations, but had provided accommodation and some analytical support for the AFP Defence Security Branch investigation (Operation Arbitre/Keeve).¹⁰
- 3.19 The Committee asked if DSD would like to make any comment on this. In response, Mr Merchant stated:

First of all, there was the inspector-general's inquiry into those allegations. He concluded that there was no substance to those

⁹ IGIS *Annual Report 2002-2003*, p.68.

¹⁰ IGIS *Annual Report 2002-2003*, pp.76-77.

allegations. DSD certainly had not bugged or intercepted communications of Mr Brereton. Certainly, in regard to the related allegation, we had not asked any of our partners to intercept those communications. They were the core elements of the allegation that was made.¹¹

- 3.20 In the course of his investigation, the IGIS did confirm media reports that at a meeting attended by ASIO in December 1999, a member of the Defence Security Branch/AFP investigation team asked whether ASIO was able to assist the leak investigation by obtaining a warrant to intercept certain telephone services at Parliament House.¹²
- 3.21 By implication the Defence Security/AFP team turned to ASIO because the AFP was not legally empowered to seek a telecommunications warrant in what was a domestic “leak” investigation (as distinct from a matter of alleged foreign espionage).
- 3.22 The IGIS has reported that the ASIO representatives replied in the negative to Defence Security and the AFP and subsequently provided a report to the Director-General of Security. Mr Richardson annotated the report saying, *inter alia*, “It is important that the AFP and Defence understand that, unless there is relevance to our functions under the Act, we cannot engage in such activity.”¹³
- 3.23 While noting ASIO’s appropriate response in relation to this particular matter, the Committee is mindful that this episode raises a more general issue of what is appropriate involvement for intelligence agencies in law enforcement investigations, including leak investigations.
- 3.24 In this regard the Committee also notes a discussion of these issues in the IGIS’s Annual Report for 2000-2001. In this, the IGIS noted that DSD may, in certain circumstances and subject to tight restrictions, target the foreign communications of Australians at the request of Commonwealth law enforcement agencies.¹⁴ Such requests are relatively few in number and, if in any doubt about whether to accede to a request, DSD would normally consult with the IGIS.¹⁵
- 3.25 In his 2000-2001 Annual Report, the then IGIS commented that in a couple of such instances (in which the requests were ultimately declined) he was concerned that the agency in question may not, before making the request, have exhausted other legal possibilities open to it, requiring more detailed

11 *Transcript*, p. 35.

12 *IGIS Annual Report 2002-2003*, p.71

13 *IGIS Annual Report 2002-2003*, p.71.

14 *IGIS Annual Report 2000-2001*, p.34.

15 *IGIS Annual Report 2000-2001*, p.34.

justification than provided by DSD, to obtain the necessary intelligence. In other words, the agencies might see use of DSD capabilities as a soft option.¹⁶

- 3.26 These cases prompted the IGIS to write to the Director DSD suggesting that, in principle, the test for triggering use of DSD capabilities in these circumstances should be no lower than that required to obtain a warrant to intercept domestic telecommunications under the applicable legislation.¹⁷ The Director of DSD replied that he supported this view and he wrote to the heads of the relevant agencies requesting that they apply this principle when considering requests for DSD assistance.¹⁸
- 3.27 In the light of the request made by the Aribite/Keeve investigation team to ASIO for telecommunications interception of a Federal Member of Parliament, there would be merit in further communication between the IGIS, ASIO, ASIS, DSD, and DIGO, and law enforcement agencies concerning the circumstances in which intelligence agencies may provide assistance to law enforcement agencies.
- 3.28 This would ensure that law enforcement agencies have a clear understanding of what assistance can and cannot be obtained from the intelligence community and the circumstances in which assistance might be obtained. In this, consideration should be given not only to the use of intelligence gathering powers and capabilities, but also to other forms of assistance such as those provided by DSD to the Arbite/Keeve investigations: analytical, logistical, accommodation and personnel.

Practice of scrutiny by IGIS

- 3.29 Although there was no specific matter raised with ASIS by the Committee, in relation to issues in the IGIS Annual Report, the Director-General of ASIS, Mr Irvine was asked about the methods the IGIS employ for inspecting the procedural correctness of operations within ASIS and the access that he gains to intelligence agency records. Mr Irvine stated:

[The IGIS] comes into ASIS and look at every piece of paper or, these days, every bit of data on a computer and he does it regularly. He comes in, will take an operation and will go through an entire operation. He will go through all of our privacy work to make sure that we are doing it properly. If we are not doing it

¹⁶ IGIS *Annual Report* 2000-2001, p.34.

¹⁷ IGIS *Annual Report* 2000-2001, pp.34-35.

¹⁸ IGIS *Annual Report* 2000-2001, p.35.

properly, he will tell us. If there are substantial issues that he feels should be reported to the government and the ministers, he will report to them.

3.30 Mr Irvine assured the Committee that:

We do not regard [scrutiny by the IGIS] as a brake on our activities; we regard it as a very legitimate organisation that performs a very legitimate function in keeping a watch on us and advising us in fulfilling our responsibilities.¹⁹

3.31 Mr Irvine was asked whether he ever points out to the IGIS something that he believes the IGIS should look at. Mr Irvine responded that he had done so and had done so quite recently.²⁰

It might appear to the public that it is reactive when IGIS is asked to do something because something has cropped up and it is felt that you need an independent observer to look at it. But IGIS comes to us on a daily basis to look at this and that. We cannot dictate to them what they will look at and what they will not.

3.32 Mr Irvine stated:

... one of the things that really worries me about the current controversies that you are reading in the press, the newspapers and so on, is that IGIS has been set up to perform a function but we are getting into the sort of situation where if it produces a report that people do not agree with then it is biased or whatever.²¹

3.33 The Committee noted that the IGIS has been called upon to undertake a wide range of special investigations including an inquiry into security in government, an inquiry into the activities of Mr Jean-Philippe Wispelaere; an inquiry into allegations relating to the Tampa incident; an inquiry into allegations concerning the deaths of the five Australian newsmen at Balibo, East Timor, in 1975, an inquiry into the Bali terrorist attack, and the above mentioned inquiry into the alleged bugging of Mr Brereton.

3.34 At a time when the Australian intelligence community is subject to more media and public scrutiny than at any time in the past three decades, there may be a tendency for Government to regard the IGIS (and indeed also this Committee) as a convenient place to refer controversial matters for investigation and resolution.

19 *Transcript*, p.8.

20 *Transcript*, p.8.

21 *Transcript*, p.7.

- 3.35 While accepting that the IGIS is and should be available to provide an independent review of matters referred to it by the Government, the Committee considers that care should be taken to ensure that this important Office is neither overburdened or diminished in relation to its primary statutory functions of exercising day-to-day oversight of the Australian intelligence community.
- 3.36 The Committee has some concern that the Office of the IGIS may be understaffed in view of its increasing workload due to the growth in intelligence agency activities, staffing levels and legislative powers. The Committee may wish to explore this further in the next review.

Legislation

The community is entitled to know whether the extraordinary powers it has granted to ASIO are being used only occasionally, or on hundreds or perhaps thousands of times a year.¹

- 4.1 This view was expressed by Mr Nigel Waters from the Australian Privacy Charter Council, during an inquiry in 2000 by the Parliamentary Joint Committee on ASIO into ASIO's public reporting. The view is as pertinent today as then.
- 4.2 Since the first review in 2002, the Parliament has passed a large volume of new legislation that affects the functions and powers of Australia's intelligence and security agencies. These laws include:
- new terrorism offences incorporated in the *Commonwealth Criminal Code Act 1995*, including provisions for the listing of terrorist organisations;
 - the *Suppression for the Financing of Terrorism Act 2002*;
 - new questioning and detention powers in the *ASIO Act 1979*;
 - amendments to the *Intelligence Services Act 2001* to authorise ASIS officers to carry and use firearms; and
 - new assumed identities provisions in the *Crimes Act 1914*.
- 4.3 While recent legislative changes have had implications for all three agencies, the impacts have been most significant for ASIO. The Committee notes in the ASIO Report to Parliament 2003-2004, the information provided by the agency in accordance with the reporting requirements of section 94(1A) and the *ASIO Act 1979*. This publicly available information includes:

1 Nigel Waters, Australian Privacy Charter Council, *Transcript of Evidence*, 17 July 2000, p.33.

- the number of requests made under section 34C to issuing authorities during the year for the issue of warrants under section 34D;
- the number of warrants issued during the year under section 34D
- the number of warrants issued during the year that meet the requirement in paragraph 34D(2)(a) (about requiring a person to appear before a prescribed authority)
- the number of hours each person appeared before a prescribed authority for questioning under a warrant issued during the year that meets the requirements in paragraph 34D(2)(a) and the total of all those hours for all those persons.
- the number of warrants issued during the year that meet the requirement in paragraph 34D(2)(b) (about authorising a person to be taken into custody, brought before a prescribed authority and detained; and,
- the number of times each prescribed authority had people appear for questioning before him or her under warrants issued during the year.

ASIO questioning relating to terrorism offences

- 4.4 The Committee questioned the Director-General of Security, Mr Dennis Richardson, about ASIO's new questioning and detention powers.
- 4.5 Division 3 of the *ASIO Act 1979* provides that ASIO may seek warrants from the Attorney-General for questioning, and in certain circumstances detention, of a person if there are reasonable grounds for believing that questioning under the provisions of the Act will substantially assist the collection of intelligence that is important in relation to a terrorism offence.
- 4.6 The Committee was advised that, as of 6 May 2004, ASIO had sought questioning warrants on three occasions. Asked about the value of questioning warrants, the Director-General of ASIO stated that the power to compel a person to attend and answer questions was potentially very valuable to ASIO's intelligence collection efforts. Mr Richardson commented:

It has worked well. It has worked better than we thought it would work. When it went through, because of the range of compromises that were made, we had some trepidation that it would be unnecessarily complex. So far, that has not been the

case. So far, the processes with the issuing authority and the prescribed authority have worked very well.²

- 4.7 ASIO further commented on the protocols put in place to ensure that the new powers were properly administered:

The Inspector-General of Intelligence and Security, or someone from his office, has in fact been present while the questioning warrants were being executed. Again, the advice that we have had from them is that they have been satisfied in the way that they have been taken forward.³

- 4.8 The Committee is pleased to note the presence of the IGIS or a person from his office during the use of questioning warrants. However, given the limited resources available to the IGIS, the Committee has concerns that a person from the IGIS office may not always be available to attend questioning, especially in instances where the IGIS or his staff may have to travel some distance on short notice.

- 4.9 Aside from the value of any intelligence obtained from questioning, Mr Richardson also noted the ability of the Australian Federal Police to charge a person subject to a questioning warrant for providing false or misleading information or for refusing to answer questions.⁴

- 4.10 On being asked if there were any unforeseen consequences to the questioning warrants, Mr Richardson noted:

The thing that has surprised us is the resource intensity of it – if you have someone for questioning and if they say things, you need a range of people there and other people back in your office and overseas because you want to be able to test all of that.⁵

- 4.11 It was also noted that there had been some initial problems with questioning warrants resulting in further amendments to the Act which were passed in 2003. It was found that warrants could expire too soon in cases where an interpreter was required and perhaps had to be flown from interstate. In relation to this problem, Mr Richardson noted:

What they brought home to us, which we had not anticipated but which we should have, and made clear was that our clientele in this area would seek to use every damn tactic they could to engage in delay. What became very clear was that, if the first two that we ran in had got approval from the prescribed authority to use an

2 *Transcript*, p.50.

3 *Transcript*, p.50.

4 *Transcript*, p.51.

5 *Transcript*, p.50.

interpreter, they would have used the interpreter..... quite strategically.⁶

- 4.12 This is not the first instance where the Committee has found that practical considerations arising in the day-to-day operation of new legislation have not been fully considered by agencies. In the event that there is to be introduced further counter-terrorism or intelligence legislation, the Committee recommends that greater consideration be given to the possible practical problems associated with the implementation of the legislation [such as the resource implications].

Assumed identities legislation

- 4.13 The Committee notes that 2002-2003 was the first full year of the operation of Commonwealth legislation dealing with the acquisition and use of assumed identities. Although the Committee is aware that the issue of identities may relate to operational matters and therefore not in the Committee's ambit of responsibility it is obliged to question the agencies in regards to any personnel or administrative issues that may have arisen since the enactment of the legislation.
- 4.14 Part 1AC of the *Commonwealth Crimes Act 1914* entered into force on the 12 October 2001. This legislation establishes a Commonwealth scheme for the acquisition and use of assumed identities by members of the intelligence and law enforcement agencies. ASIO and ASIS are participating agencies under the legislation.
- 4.15 ASIO was asked by the Committee about the internal controls the agency applies in relation to assumed identities and whether there were any gaps in current assumed identities legislation. ASIO stated that the agency must report annually to the IGIS in relation to the use of assumed identities. This report must include the number of authorisations issued by the authorising person, a description of the activities being undertaken by the officers and a statement as to whether any fraud or other unlawful activity was identified by an internal audit.⁷
- 4.16 Further to this, ASIO indicated that it includes the number of approvals granted or revoked in the reporting period along with a description of duties undertaken by approved officers and the results of the audit of relevant records in its Annual Report.⁸

6 Transcript, p.51.

7 ASIO, *Questions on Notice*, p.5.

8 ASIO, *Questions on Notice*, p.5.

- 4.17 According to ASIO's Annual Report 2002-2003, ASIO issued three authorisations under the legislation, none of which was varied and none revoked.⁹ The first authorisations under the Commonwealth scheme were issued in June 2003. Accordingly, no audit was conducted of records of authorisations under the Commonwealth scheme during 2002-2003.¹⁰
- 4.18 The 2002-2003 Annual Report indicates that during that financial year, 40 assumed identity approvals were granted by ASIO in accordance with the *NSW Law Enforcement and National Security (Assumed Identities) Act 1998*. No approvals were varied and none was revoked. The Annual Report states that the general nature of the duties undertaken by officers under the assumed identities provision concerns surveillance duties, intelligence officers' duties, and support officer duties.¹¹ An audit required in accordance with Section 11 of the Act was conducted in August 2002 for the proceeding financial year. The audit did not disclose any fraudulent or other criminal behaviour.
- 4.19 The Committee notes that assumed identities are not covered by the Attorney-General's Guidelines for the Collection of Intelligence. However policy on the use of assumed identities is set out in a classified ASIO Policy and Procedures document.¹² The Committee further notes that ASIO is reviewing its previously approved assumed identities to bring them in line with the new legislation and that ASIO authorisations are audited by the Agency's Internal Auditor who reports the results to the Director-General through the ASIO Audit and Evaluation Committee. ASIO stated that there was a primary gap in the current legislation as it relates to:
- ...acquiring proofs of identity from Commonwealth agencies or non-government agencies. The legislation was enacted with the intention that States and Territories would pass complementary legislation. At this stage the only jurisdiction to enact such legislation is NSW.'¹³
- 4.20 The Committee also asked ASIS whether it used the assumed identities provisions of the *Crimes Act 1914* and the *NSW Assumed Identities Act*, and if so, what internal controls and guidelines were in place for the use of assumed identities. ASIS advised that:

9 ASIO, *Annual Report 2002-2003*, p.108.

10 ASIO, *Annual Report 2002-2003*, p.108.

11 ASIO, *Annual Report 2002-2003*, p.108

12 ASIO, *Questions on Notice*, p.5.

13 ASIO, *Questions on Notice*, p.6.

The issuance of an assumed identity is governed through a formal approvals process. The issuance of documentation obtained under an assumed identity is approved by the Director-General or his delegate, a substantive SES officer, currently the Deputy Director-General, Corporate Services.¹⁴

- 4.21 Further to this, ASIS stated that before an officer can establish an assumed identity they must attend an appropriate training course.¹⁵
- 4.22 The Committee may choose to examine more closely the use of assumed identities legislation by ASIO and ASIS and seek more detailed briefings on this matter.

Section 6(1)(e) of the Intelligence Services Act, 2001

- 4.23 Section 6(1)(e) of the *Intelligence Services Act, 2001* provides that in addition to its external intelligence collection role, ASIS may “undertake such other activities as the responsible Minister directs relating to the capabilities, intentions or activities of people or organisations outside Australia”.
- 4.24 Section 6A requires the responsible Minister to inform the Committee of any directions issued under Section 6(1)(e) as soon as practicable.
- 4.25 The Committee has received advice of a number of directions by the Minister for Foreign Affairs under Section 6(1)(e) since 2001. The Committee recently sought further information from the Minister for Foreign Affairs in relation to one direction.
- 4.26 The Committee is concerned that advice from the Minister for Foreign Affairs under Section 6A should be sufficiently detailed to ensure that the Committee is aware of the nature and circumstances of the activity to be undertaken by ASIS under the provisions of Section 6(1)(e). A mere notification that a direction has been given is insufficient.
- 4.27 It is the intention of the Committee to keep a watching brief on such directions and in the future may seek a briefing from ASIS in relation to directions issued by the Minister.

14 ASIS, *Question on Notice*, p.5.

15 ASIS, *Question on Notice*, p.5.

Report of the Inquiry into Australian intelligence agencies

- 4.28 The Committee welcomed the release of the report by Mr Philip Flood AO, Report of the Inquiry into Australian Intelligence Agencies.
- 4.29 Mr Flood recommended that the mandate of the Committee should be extended to all of Australia's, intelligence agencies – that is, it should cover also ONA, DIO and DIGO on the same basis as it presently covers ASIO, ASIS and DSD.
- 4.30 The Committee strongly supports this recommendation. If enacted, this proposed change to the *Intelligence Services Act 2001* will have significant implications of the Committee's work and the resources required to support its activities.¹⁶

Future reviews of legislation

- 4.31 The Committee will be reviewing a number of pieces of legislation in the new Parliament.
- 4.32 Under Section 29(1)(ba) of the *Intelligence Services Act 2001*, the Committee must, as soon as possible after the third anniversary of the *Australian Security Intelligence Amendment (Terrorism) Act 2002*, review the operation, effectiveness and implications of amendments made by that Act and the following Acts:
- (i) the *Border Security Legislation Amendment Act 2002*;
 - (ii) the *Criminal Code Amendment (suppression of Terrorist Bombings) Act 2002*;
 - (iii) the *Suppression for the Financing of Terrorism Act 2002*.
- 4.33 The Committee must also review, by 22 January 2006, the operation, effectiveness and implications of:
- (i) Division 3 of Part III of the *Australian Security Intelligence Organisation Act 1979*; and
 - (ii) amendments made by the *Australian Security Intelligence Organisation Legislation Amendment (Terrorism) Act 2003*, except item 24 of Schedule 1 to that Act (which included Division 3 of Part III in the *Australian Security Intelligence Organisation Act 1979*).

16 Philip Flood AO, *Report of the inquiry into Australian intelligence agencies*, p.180.

- 4.34 The Committee must at the 3rd anniversary review under S102.1A(2) the listing provision under the *Criminal Code Amendment (Terrorism Organisations) Act, 2004*. In addition to this, it is the intention of the Committee to question the agencies on a regular basis in regard to the administration of legislation that substantially affects the powers of intelligence agencies. This will involve a major commitment of the Committee's time and resources in this Parliament.

Aspects of administration

- 5.1 As stated previously, the Australian National Audit Office audits the financial statements of ASIO and ASIS. DSD is audited as part of the ANAO's examinations of the financial statement audit of the Department of Defence. The Committee is reliant on the assurance of the ANAO that the financial statements show that the expenditure of the agencies is right and proper and that the agencies comply with government accounting standards.
- 5.2 Annual financial statement audits do not review administration beyond the financial systems that are in place to monitor expenditure. As the ANAO observed in evidence to the Committee, "We are validating the accounts, but the administration is something that is not going to be validated directly through this audit."¹
- 5.3 The Committee has conducted as detailed a review as possible, given available time and circumstances, of the administration of ASIO, ASIS and DSD. In the future, it is anticipated that the Committee will continue to examine a wide range of administrative issues.
- 5.4 Evidence gathered in this review will serve as a benchmark from which the Committee will be able to monitor, over time, a number of issues such as staff retention rates, human resource management, workplace relations, language training, agency security and so on.
- 5.5 This review of administrative matters drew on publicly available material such as the IGIS annual report, ASIO's unclassified annual report and submission, and classified submissions provided to the Committee by all three agencies.

1 ANAO, *Transcript*, p.6.

- 5.6 The three agency submissions provided varying amounts of detail about administration. ASIO's classified and unclassified submissions were the most comprehensive, the classified submission of ASIS less so, while DSD's classified submission fell short of the level of detail the Committee requires. The Committee subsequently questioned senior officers of the agencies at length at private hearings. Answers to additional questions on notice were also received from the agencies.
- 5.7 The Committee suggested to ASIS and DSD that future submissions provide not only financial statements but also detailed accounts of administrative arrangements and procedures.
- 5.8 Clearly much of the evidence relating to the administration of ASIO, ASIS and DSD cannot be presented in this chapter. There are many aspects of agency administration which are properly classified. However, where possible, some detail of the issues examined by the Committee has been included here. In this way the Committee aims to provide the Parliament and the public with at least an indication of the extent of its review, consistent with the requirements of security.
- 5.9 In addition to this public report, the Committee has forwarded a classified letter to the Prime Minister and the relevant Minister in relation to an issue of concern noted by the Committee. The Committee will in due course consider any response from the Government and determine whether to pursue the matter further.
- 5.10 Areas of administration broadly covered in this review include agency security, human resource management, information management and risk management or business continuity planning. The Committee may pursue some of these and other issues in more detail in further reviews.

New challenges and organisational expansion

- 5.11 In a recent publication, the Director-General of ASIO highlighted the challenges of the current security environment:

The immediate effect of September 11 for ASIO represented, as it did for many other agencies, a lot of hard work. ASIO went on twenty-four hour work cycle, problematic for a small organisation and something that was unsustainable over the longer term. Accordingly, we had to reprioritise. That part was not too hard as we simply stopped doing a number of things – indeed, some of what we stopped doing has yet to be resumed. This has caused

some angst, but the challenges arising from the new security environment have made such changes unavoidable.²

5.12 The Committee has some concerns that with the current necessary focus on the area of counter-terrorism, intelligence agencies may not be fully addressing all of their functions as indicated by Mr Richardson's comments.

5.13 The current expansion of Australia's intelligence agencies in both a physical as well as operational sense is also presenting the agencies with significant administrative challenges. As stated in evidence to the Committee by the Director-General of ASIS:

Anyone will tell you that a corporation that increases in size by seven per cent a year is doing well and can do it. A corporation that increased in size by 14 per cent a year is running serious risks, and we are talking about 20 per cent for the last couple of years. The budget process will have us expanding over a four-year period, and we have carefully staged the expansion so that we bring on people at a rate at which we can absorb and train them.³

5.14 It is the concern of the Committee that complex administrative challenges can arise in a time of rapid change. Australia's intelligence agencies are under increased pressure to perform yet must also expand. To address the need for expansion to cope with increased work loads, the Government has significantly increased its funding to ASIO, ASIS and DSD. A senior ANAO officer noted:

I get the feeling there is some stress to respond quickly to the extra money but not in the sense of concern about the actual recording and expenditure of it. To be able to respond positively I think creates some pressure.⁴

5.15 The Committee is concerned that if these pressures and challenges are not met in a timely fashion, significant administrative problems with implications for accountability and operational performance may develop.

2 Dennis Richardson, Director-General of ASIO, "Australia After September 11: The Intelligence Challenge," in David Martin Jones (ed), *Globalisation and the New Terror, The Asia Pacific Dimension*, Edward Elgar Publishing, Northampton, Mass, 2004, p.285.

3 *Transcript*, p.11.

4 Australian National Audit Office, *Transcript*, p.4.

Security

- 5.16 The Committee has an ongoing interest in the area of agency security arrangements. The Committee explored this issue with the agencies both in its first review of administration and expenditure, and in its subsequent *Private Review of Agency Security Arrangements* in August 2003.⁵
- 5.17 In the wake of the IGIS's inquiry into security issues presented to the Prime Minister in March 2000, the Committee examined a range of agency security issues. The classified IGIS report contained over 50 recommendations. All the recommendations of the IGIS report were endorsed by the Prime Minister and Cabinet, and referred to agencies for implementation.
- 5.18 The Committee's *Private Review of Agency Security Arrangements* which followed the IGIS's inquiry included four recommendations relating to personnel and physical security.

Recommendation 1

That, as a first priority, the agencies address any existing or anticipated backlog in initial vetting and re-evaluation of Top Secret Positive Vetting (TSPV) security clearances to ensure that these processes meet Protective Security Manual standards by 2003-2004 at the latest. Further, that the agencies include statistics on the number of outstanding TSPV re-evaluation cases and the times taken to process clearances in the reports made to this Committee as part of the annual review of administration and expenditure.

Recommendation 2

That the Interagency Security Forum (IASF) review urgently areas where agencies are experiencing difficulties obtaining security-related information about personnel, such as the refusal by credit reference agencies to provide information direct to the Commonwealth, and develop proposals for appropriate legislative or policy action by the Commonwealth Attorney-General.

Recommendation 3

That, as a priority, DSD implement random bag inspection procedures at all its headquarters facilities and all other installations in Australia.

5 *Private Review of Agency Security Arrangements*, Parliamentary Joint Committee on ASIO, ASIS and DSD, August 2003, p.4.

Recommendation 4

The Committee recommends that, subject to the outcomes of the IASF working group findings, ASIO, ASIS and DSD allocate funding for the development and implementation of electronic article surveillance systems for all Australian offices and installations.⁶

Security Issues

5.19 Against this background, the Committee sought to establish what changes agencies have recently made to their security practices. DSD outlined its broad commitment of resources to agency security functions as follows:

We have about a dozen people working in the security area. Their responsibilities include physical security—managing the guarding contract, making sure the fence works and those fairly mundane aspects—but the area also has a staff education function. One of the things that came out of Mr Blick’s report into the Wispelaere case was the requirement for greater interagency cooperation. There is a group called the Interagency Security Forum which includes all of the intelligence agencies and some from the other policy agencies. One of the initiatives that came out of that is cross-agency communication and cross agency awareness raising.⁷

Security Clearances

5.20 In the Private Review of Agency Security Arrangements previously conducted by the Committee, it was noted that DSD and ASIS had a significant backlog in their re-evaluation of security clearances. In accordance with the requirements of the Commonwealth Protective Security Manual, a major re-evaluation of an employee’s security clearance is to be carried out every 5 years, to take into account changes in personal circumstances, career development, significant relationships or change in financial status, which may impact on an individual’s suitability to hold a clearance.

5.21 The Director-General of ASIO stated that:

In relation to us, we are reasonably up with it. What we have to do is ensure that we are still up with it in two or three years time, with the rapid expansion. But, in terms of our 30-month and five-

6 *Private Review of Agency Security Arrangements*, Parliamentary Joint Committee on ASIO, ASIS and DSD, August 2003, p.4.

7 *Transcript*, p. 35.

year part and full revalidations, we are reasonably up with them. We are not significantly behind.⁸

5.22 On being questioned about current re-evaluation caseloads, DSD responded:

We are starting to make a bit of a dent in the backlog of re-evaluations. Last time we spoke to this Committee you asked us if there was anyone who had been outside for more than 10 years. I think we found one, and we fixed that straightaway. I do not think we have any significant numbers—I can get back to you with the actual numbers over about seven years. We are taking a very targeted approach to re-evaluations, rather than just simply going through in alphabetical order or taking people off the list. We are looking at people whose circumstances have changed, who have become married or divorced—those sorts of things. So we are very much taking a risk management approach to this rather than simply starting at the beginning of the list and keeping going through it.⁹

5.23 The Committee asked DSD when they would achieve the Protective Security Manual requirements of five years. DSD stated that, '(w)e might be looking at a couple of years at least.'¹⁰

5.24 The Director, DSD outlined to the Committee the work being done by DSD in the area of psychological assessments of DSD staff. All existing DSD staff are being put through organisational suitability assessment processes (OSP). The aim of these assessments as stated by Mr Merchant is to gain 'better insight into where there may be a set of circumstances that could develop into a management issue for us. We have been able to put in place appropriate early intervention strategies.'¹¹

5.25 Currently, DSD has indicated 690 employees have been identified as requiring to undertake an OSP assessment. Of these, 205 have completed the assessment. It is expected that this process shall be completed around September 2005.¹² More information on the nature of these suitability assessments can be found in the section of this report on workplace relations.

5.26 The Committee questioned the agencies in relation to whether anyone had been denied their security re-evaluation.

8 *Transcript*, p.55.

9 *Transcript*, p.33.

10 *Transcript*, p.33.

11 *Transcript*, p.34.

12 *Questions on Notice*.

- 5.27 Mr Richardson stated that while ASIO had not had anyone fail the five year review, '(w)e have had people with whom we have been required to pursue issues, financial or otherwise.'¹³ Further to this Mr Richardson stated that as part of ASIO's workplace culture, staff are encouraged to come forward with personal issues which could give rise to security concerns, such as money or relationship problems.
- 5.28 In addition to this, Mr Richardson commented that the organisation would '...occasionally help people out financially on a loan basis or whatever. We do look at that.'¹⁴
- 5.29 When an issue of concern is identified by the re-evaluation process, Mr Richardson stated:
-we have had people who have had to go on psych care, where they have had to work with a psychologist for 12 to 18 months to resolve certain issues. We have also had financial issues which we have had to go through. But we have never had anyone who has failed in that sense that we have been required to withdraw their security clearance and have them leave the organisation¹⁵
- 5.30 DSD stated that they had a high number of initial withholds "...more in fact in the last year than in the previous decade."¹⁶ There were a number of people that DSD felt might not make it through the security clearance process which they managed by placing them into positions that did not require higher level security clearances.¹⁷
- 5.31 The Committee notes, however, that this is only a short-term option. It will not always be possible for an intelligence organisation to redeploy people into lower level or non-security classified jobs. This may be an area that will need further attention by DSD and other agencies in the future.
- 5.32 The Committee also raised the question of the relationship between the security clearance process and other personnel management issues. DSD stated that:
- It is very important when we have a management issue—although we are aware that it might become a security issue—that we do not push it into becoming a security issue too early.¹⁸

13 *Transcript*, p.55.

14 *Transcript*, p.55.

15 *Transcript*, p.55.

16 *Transcript*, p.33.

17 *Transcript*, p.33.

18 *Transcript*, p.34.

5.33 The Committee was keen to determine whether as part of their management tools, DSD would ever threaten to revoke or withhold an officer's security clearance. Mr Merchant responded: "no", and further to this, "not unless it related to a security issue that we had running with them."

5.34 In addition, in light of the large staffing increases within intelligence agencies, the Committee sought to inquire into staff vetting practices generally. Mr Merchant responded:

We have been very stringent, and obviously we continue to have the staff of the positive vetting section undertake their work. When I say that the time frame for clearance of people through the positive vet process has been reduced, that is a direct consequence of the increased number of case officers, not because they are doing it in a less intensive way. In fact, the intensity of the PV checking process has increased in accordance with the recommendations out of the Bill Blick inquiry after Wispelaere and Lappas.¹⁹

5.35 ASIS stated that while they were working on reducing their security re-evaluation backlog, increased recruitment meant that the workload for security vetting was considerable. As a consequence it was difficult to reduce a backlog. Nevertheless ASIS stated:

...we are down from 14 per cent unre-evaluated last year to about 10 per cent this year and I am hoping that by the end of this Calender year we will have halved that percentage again.²⁰

5.36 The Committee understands the constraints currently on ASIS in regards to clearing its re-evaluation backlog.²¹ ASIS is undertaking significant recruitment and as such considerable pressure is on its security vetting area. However, the Committee will continue to monitor the progress of the agency in regards to this important internal security process.

5.37 In addition to this, the Committee inquired if any ASIS officer had not retained their security clearances through the re-evaluation process and, if so, why it had been denied. ASIS advised that one officer had been found to have provided information that was contrary to information provided when he had joined the service. This officer had since left ASIS.²²

19 *Transcript*, p.36.

20 *Transcript*. p.2.

21 *Transcript*.p.2.

22 *Transcript*, p.20.

Entry and exit searches

- 5.38 As pointed out in the Committee's previous report on agency security, the use of personal and baggage searches, administered by security attendants or guards, can guard against the transport of unauthorised electronic recording and transmitting equipment, copying equipment or explosive devices into secure areas. Similarly, exit searches can act as a deterrent to the unauthorised removal of resources, especially security classified information.
- 5.39 DSD informed the Committee at the time of the private review that, under the *Crimes Act 1914*, it was not legally permitted to enforce random bag searches although it had taken initial steps to have the Northgate compound declared a "prohibited place" under the Act, and that this would provide a legal basis on which to conduct and enforce searches.²³
- 5.40 The Committee questioned DSD in relation to how this security procedure was working. In regards to bag searches, DSD stated:
- That is now in place at DSD headquarters and at all DSD sites. We have implemented the Committee's recommendation. Thank you for the incentive to do that.²⁴
- 5.41 The Committee welcomes this development.

ASIO polygraph trial

- 5.42 As previously noted in the private review undertaken by this Committee on Agency Security Arrangements in 2003, the IGIS's Inquiry into security issues recommended that the agencies examine new tools that might enhance the reliability of their security clearance processes. In response to this recommendation, ASIO undertook a trial of the polygraph as a tool in the vetting process.
- 5.43 The Committee recognises that there is a need to develop new methods to improve the reliability and accuracy of the vetting process.
- 5.44 The Committee is aware that some controversy surrounds the use of the polygraph by security agencies in the United States. The Committee is also aware that the NSW *Lie Detectors Act 1983* bans the use of polygraphs in NSW for any purpose relating to employment. There is no Commonwealth legislation relating to the use of polygraphs. No other State or Territory has adopted legislation relating to polygraphs.

23 Parliamentary Joint Committee on ASIO, ASIS and DSD, *Private Review of Agency Security Arrangements*, August 2003, p.32.

24 *Transcript*, p.34.

5.45 The Committee wished to review the results of the ASIO polygraph trial. Although the ASIO Annual Report indicates that the polygraph trial was completed in January 2003, ASIO gave evidence that the report on the outcomes of the trial is not yet completed.²⁵

5.46 The Director-General of ASIO explained:

The thing is [the polygraph trial] has been hit sideways by September 11 and Bali. I know that was almost three years ago, but we have literally had part-time resources devoted to it. It is inching forward at a very slow pace. We will probably get something to government sometime later this year, but it is not something that has any real urgency in it at the moment.²⁶

5.47 The Committee wanted to know whether new legislation would be required to implement polygraph tests. Mr Richardson stated he did not believe any new legislation would be required.

5.48 The Committee also sought the views of the Director DSD in relation to the use of polygraphs in the security vetting process. Mr Merchant stated:

We would obviously follow a consensus decision, if there were one, to either use or continue not to use polygraphs. It is quite an emotive issue when it is raised. It is not something that Australians react well to; it is not part of our culture.²⁷

DSD stated that:

While we do not use polygraph, we do have an instrument that we use where the US uses polygraph. That is a battery of psychometric testing, which is applied by a psychologist and is aimed to achieve some of the same results. The Americans do not do that. They rely on the polygraph; we rely on the psychometric testing. Some would argue that our system is actually better, because it involves you sitting down, face to face, with a trained psychologist who is looking at all your answers to a battery of questions.²⁸

5.49 The Committee believes that the use of polygraph technology in either the security vetting process or intelligence operations raises important issues of policy and process. The Committee notes that there are a range of views about the desirability or otherwise of introducing polygraph tests as a personnel security tool. Without further consideration, the Committee is

25 *Transcript*, p.58.

26 *Transcript*. p.58.

27 *Transcript*, p.36.

28 *Transcript*, p.36.

not persuaded that polygraphs should be employed in the absence of a national legislative framework. The Committee will await the finalisation of the report on the ASIO polygraph trial with interest.

Recommendation 5

- 5.50 **The Committee recommends that the Government provide the Committee with a copy of the report on the outcomes of the ASIO polygraph trial as soon as it is completed.**

Human resource management

- 5.51 For the purposes of this review, human resource management broadly encompasses recruitment, training and workplace relations. The nature of this review has not allowed the Committee sufficient scope to pursue any one area of administration or expenditure in-depth. It does, however, serve to highlight areas that need further examination. It is the view of the Committee that the area of human resource management in intelligence agencies may indeed require a specific review in the future.

Recruitment

- 5.52 In the collection of human intelligence, an agency's most important asset is the reliability, integrity and talent of its officers. As a consequence, the methods agencies use, and the criteria they follow when recruiting staff is of considerable significance to Australia's overall national security.
- 5.53 The current importance of recruitment to all three intelligence agencies was made clear to the Committee through submissions and at hearings. Expansion is only made possible through recruitment. All three intelligence agencies have been recruiting new personnel over the last few years to cope with increased work demands, particularly in the area of counter-terrorism.
- 5.54 Recruitment is a complex undertaking for any intelligence agency. An intelligence officer has access to information that may range from sensitive in nature to top secret. Although the work of many intelligence officers involves the routine collection and/or analysis of information, the intelligence community has a need for a wide range of personnel with specialist skills.

- 5.55 Some areas of intelligence collection may require an officer to keep their occupation secret even from family and friends, to travel overseas for long periods of time, take up a false identity and even put their personal safety at risk.
- 5.56 In recent years, significant new legislation has expanded the powers of Australian intelligence agencies enabling them to question and detain individuals and in the case of ASIS to carry weapons overseas. The need for the right person for the job is obvious, as is the need for strictly enforced codes of conduct.
- 5.57 A most basic requirement for Australian intelligence officers is the ability to keep Australia's most sensitive secrets safe. Foreign intelligence agencies may make significant efforts to collect information about Australia's security operations. An underlying concern of any intelligence agency when recruiting is to guard against the possibility of recruiting someone who may compromise Australia's national security. The risk includes possibilities ranging from obvious areas of human frailty such as alcoholism or gambling to blackmail, to the possibility of infiltration by a foreign intelligence agency.
- 5.58 It is not surprising that recruitment for intelligence agencies is a very resource intensive, lengthy and expensive undertaking. Applicants for ASIO and ASIS require security clearances up to a minimum of Top Secret Positive Vetting. They must undergo intrusive background checking and a barrage of psychological testing before they are able to be employed. ASIO states in its submission to the Committee that this process takes around 6 months from the time an advertisement is placed to the date when an officer may commence duties.²⁹ In addition, a new recruit may have to undergo significant training and gain considerable on the job experience before they may be of any significant value to the organisation. In the case of ASIS, a new recruit may be with the agency for several years before they are of value to its operations.³⁰
- 5.59 In its submission ASIO states that '(r)ecruitment remains one of the agency's highest priorities.'³¹ At one of its lowest staffing levels in 1998, the average staffing level fell to 488. As of February 2004, ASIO's staff level was around 763. Information supplied by ASIO states that these levels are set to grow to around 900 by June 2005.³²

29 ASIO Submission, p.7.

30 Transcript, p.3.

31 ASIO Submission, p.7.

32 ASIO Submission, p.7.

5.60 To achieve such growth ASIO has continued to train and recruit its own Intelligence Officers (IOs) through its graduate trainees programme and has recruited specialist analysts who generally are on 2-4 year contracts. ASIO states in its submission that the, 'requirement for specialist analysts should be reduced over the next 4-5 years as more IOs are recruited and trained.'³³

5.61 Mr Richardson commented that when possible ASIO seeks to re-engage retired staff. While it is not always possible for agencies to re-employ retired staff because of the requirements of Commonwealth superannuation, Mr Richardson emphasised the value of retaining access to the skills of former officers:

We have people who retire from ASIO but no-one leaves the place.³⁴

5.62 Retired ASIO staff not only bring with them their knowledge and training but are also known commodities in relation to their backgrounds (and therefore, in terms of the security vetting process, less resource and time intensive.)

5.63 ASIS also employs retired staff as well as contract staff. The Committee inquired as to the capacity by which contract staff were employed by the agency. ASIS stated that, although contract staff are employed in various areas, they do not undertake operational activities on behalf of the service.³⁵

5.64 The Committee wished to pursue the issue of new recruitment strategies with the agencies. ASIS stated:

We have advertisements in the media, advertising publicly for intelligence officers; we have an ASIS web site upon which we put the general criteria for intelligence officers and seek applications from people; and we have also just commenced a talent-spotting program. This is something that ASIS used to do, going back some 20-odd years.³⁶

5.65 While each agency has a distinctive recruitment profile it was not clear to the Committee whether the existing practice of running separate and competitive recruitment processing necessarily results in the optimum placement of personnel, especially linguists and other specialists, across all the agencies. In the area of civilian recruitment DSD noted:

33 *ASIO Submission*, p.8.

34 *Transcript*, p.41.

35 *Transcript*, p.6.

36 *Transcript* p.2.

The major mechanism we have used for our increases in civilian staff has been increased graduate recruitment over the past two years. We have run two graduate intake rounds each year for the past two years.³⁷

- 5.66 The Committee questioned DSD regarding the number of civilian personnel as opposed to military personnel who work for DSD. DSD gave evidence that they have had difficulty over the last few years filling some 100 ADF billets. This inability to fill ADF billets was explained by DSD as being the result of staffing shortages generally across the military services. Mr Merchant stated:

I think to be fair to them it reflects some more fundamental problems that they have in their difficulties with staffing throughout the services and also, frankly, the very high operational tempo.³⁸

- 5.67 DSD gave evidence that they currently employ 296 ADF personnel.³⁹ DSD has received funding from Defence to enable the civilianisation of a number of the vacant ADF billets.

- 5.68 The Committee questioned DSD about the difference in pay scales between civilian and military personnel. DSD stated that it costs in the order of 31 per cent more to employ ADF personnel as opposed to civilian personnel. This figure rises to around 51 per cent more for ADF employee if indirect costs are included such as defence housing for example.⁴⁰

- 5.69 The greater civilianisation of DSD is of interest to the Committee as it may have some longer term consequences for the overall culture of the workplace. The Committee asked DSD how the military and civilian workforces integrated. Mr Merchant commented that this is an area of ongoing management attention:

.... we have put a lot of time and effort into what we call the Building the DSD Team program, which emphasises that the complexity of our business requires one team comprised of military, civilians, contractors and leveraging industry.⁴¹

- 5.70 ASIO, ASIS and DSD are engaged in significantly increased recruitment. The Committee recognises the need for more intelligence officers. It also recognises that recruitment is a complex and costly undertaking for intelligence agencies. Careful strategic planning is required to ensure that
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37 *Transcript*, 36.

38 *Transcript*, p.27.

39 *DSD Questions on notice*.

40 *DSD Questions on notice*.

41 *Transcript*, p.28.

recruitment campaigns result in the acquisition of suitable personnel and their proper placement across the intelligence community as a whole.

- 5.71 It is also necessary to consider the impact of large scale recruitment on overall skill levels within agencies. Mr Richardson gave evidence that:

If you are growing quickly, your inexperience levels inevitably go up. About 50 per cent of people in ASIO today have been in the organisation for less than five years. That percentage is going to grow very significantly over the next couple of years.⁴²

Further to this, Mr Richardson stated:

There is not a lot you can do about it but it does mean you have heavy demands on people who have been in the organisation for some time in terms of mentoring and the like. It means that our middle managers, assistant directors and directors are leading people who overwhelmingly have quite limited experience, which means there is a much bigger demand on them in the assistance they provide to staff and everything that goes with it. They have to think more carefully and spend a lot more time doing things themselves in a proper way than they would have had a few years ago.⁴³

- 5.72 It is the intention of the Committee to examine intelligence agency recruitment at length through a further future review or inquiry. In the short term the Committee wishes to become more visible to new recruits so that they have an understanding of the Joint Committee's role and functions.

Recommendation 6

- 5.73 **It is the view of the Committee that the Chair of the Committee or members nominated by the Chair should be invited by ASIO, ASIS and DSD to attend orientation sessions with new recruits thereby gaining a greater understanding of the orientation process and to provide opportunities for new recruits to be advised of the Committees role and responsibilities.**

42 *Transcript*, p.41.

43 *Transcript*, p.41.

Workplace diversity

- 5.74 The recruitment of people from a range of cultural backgrounds would broaden the expertise and effectiveness of Australia's intelligence agencies by offering greater cultural understanding and more varied and extensive foreign language expertise. The Committee also recognises that the balance of male and female recruits is also of relevance to human intelligence collection organisations.
- 5.75 There can however be difficulties in recruiting intelligence officers whose backgrounds include large amounts of time spent outside Australia and/or with overseas family connections. It may be the case that their past is considerably more difficult to check therefore making the security vetting process much more challenging.
- 5.76 ASIO stated in their submission that the "percentage of employees from non-English speaking backgrounds remains low", but ASIO added, "we are seeking to address this deliberately in our current IO recruitment campaign."⁴⁴
- 5.77 Further to this, Mr Richardson stated:
- Our intelligence officer stream is overwhelmingly white Anglo-Saxon. We have looked at that and have had some success in recent years, but we have not been very successful at this point in time in attracting into the intelligence officer stream people from the range of background that we would like.⁴⁵
- 5.78 It is noted in ASIO's submission that the percentage of women within the organisation has risen over the 2002-2003 period to 42 per cent and that, 'the percentage of female staff at senior officer level' increased from 13 per cent to 24 per cent over the same period.⁴⁶ Mr Richardson stated, however, that this has not been the result of a deliberate strategy to increase the levels of female employment in ASIO.⁴⁷
- 5.79 The ASIO submission states that this rise in the percentage of women in ASIO, represents a recovery from the agency's Central Office move in 1986 from Melbourne which saw ASIO lose numbers of its female workforce.⁴⁸
- 5.80 It was, however, further noted at the hearing that ASIO's January 2004 intake for the first time in a number of years included more males than

44 *ASIO Submission*, p.10.

45 *Transcript*, p.41.

46 *ASIO Submission*, p.10.

47 *Transcript*, p, 41.

48 *ASIO Submission*, p.10.

females and that certain areas within ASIO were predominantly staffed by male officers.⁴⁹

- 5.81 ASIS and DSD provided no information in relation to the gender balance or cultural diversity within their agencies. It is the expectation of the Committee that this will be included in their submissions of the next review.

Workplace Relations

- 5.82 The Committee examined the question of how workplace disputes are resolved within ASIO, ASIS and DSD. As with other aspects of human resource management, such as recruitment, workplace relations also represent some special challenges within intelligence agencies. In ASIS, for example, staff cannot be members of outside unions but rather are offered membership of an internal staff association. ASIO staff may maintain union membership but the agency seeks to manage its workplace relations internally. ASIO and ASIS have an internal ombudsman who is able to negotiate with different parties in a dispute. This person is placed in this position by management.⁵⁰
- 5.83 ASIS provided information on a number of largely internal mechanisms the organisation has in place to manage workplace disputes. Such mechanisms include membership of the staff representatives group, access to the internal ombudsman and staff counsellors. In addition there is a formal grievance procedure and a grievance review process chaired by, 'an independent Chair, who is not a member of ASIS, and who is appointed by the Director-General as provided by section 37 of the *Intelligence Services Act 2001*.'⁵¹ A staff member may in addition seek independent legal advice; security requirements for the nominated legal representatives will be facilitated by ASIS. Both ASIS and ASIO have psychologists available to talk to staff who are having workplace problems.

49 *Transcript*, p.43.

50 *ASIS, Questions on Notice*, p.9.

51 *ASIS, Questions on Notice*, p.9.

- 5.84 ASIO informed the Committee that employees who feel aggrieved by a particular action or decision are encouraged to attempt to resolve matters informally in the first instance.⁵² They may do this by seeking the assistance of:
- the ASIO staff Ombudsman;
 - staff from the Human Resource Management unit; or
 - the Staff Workplace Relations Officer.
- 5.85 Where an employee chooses not to pursue the matter informally, or where an employee is unsatisfied with the outcome of the informal process, they can institute formal proceedings requesting the appointment of an inquiry officer to investigate the action or decision. The inquiry officer appointed may be either from within or outside ASIO.⁵³
- 5.86 In instances where an employee remains aggrieved after completion of the inquiry officer's investigation, they can request a further inquiry by a Grievance Review Committee which will be chaired by a person independent of ASIO and includes a management and a Staff Association nominee.
- 5.87 DSD indicated that it valued early intervention strategies to avoid the development of individual workplace issues.
- ...we are putting all of our existing staff through the organisational suitability assessment process....It is not designed to result in people leaving DSD, but it has certainly given us much better insights into where there may be a set of circumstances that could develop into a management issue for us. We have been able to put in place appropriate early intervention strategies. It is hard to say a negative-isn't it?-but we have not had subsequent problems emerge from that.⁵⁴
- 5.88 The early intervention strategies employed by DSD include, for example, regular consultation with supervisors and the encouragement of supervisors to observe any obvious signs of stress or deteriorating mental health of their staff; sudden changes in physical appearance, mental condition or changes in personal circumstances. Such practices would appear to be good staff management. The Committee intends to follow this process over the next few years to observe how effective the strategy is within DSD.
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52 Supplementary information from ASIO.

53 Supplementary information from ASIO.

54 *Transcript*, p.34.

ASIS ethics and codes of conduct.

- 5.89 In the current context of organisational expansion and increased operational tempo, the Committee intends to examine the various Codes of Conduct adopted by agencies in regards to how they are implemented and monitored.
- 5.90 ASIS provided the Committee with a copy of their Code of Conduct which is a classified document. This document sets out ASIS values, and ASIS gave evidence that all staff upon joining the service were required to acknowledge that they have read and will abide by this Code.⁵⁵
- 5.91 In addition, ASIS states that all staff attend an induction course, which includes a presentation on ethics and values. Officers are obliged to raise any potential breach of the Code with the Assistant Director-General, Human Resources and Development. The internal Ombudsman and the staff counsellor encourage staff to report breaches and in addition, ASIS has a number of internal audit processes. Day to day management and supervision as well as financial management activities may also aid in management becoming aware of potential breaches.⁵⁶
- 5.92 It was noted by the Committee that there were two breaches of the code by one officer during the 2002-2003 period. This officer was dismissed.⁵⁷
- 5.93 The Committee is concerned that the Code of Conduct for ASIS is a classified document. The nature of a document such as a Code of Conduct is to not only make the officers of the agency aware of their responsibilities under the code, but also to make the values and ethics of the agency known to their clients, other government departments and agencies and members of the public who may have dealings with the agency.
- 5.94 While aspects of ASIS Code of Conduct may be rightly security classified, it should be possible to produce an unclassified version which could supplement the classified guidance or instructions.

Recommendation 7

- 5.95 **The Committee recommends that ASIS produce an unclassified version of its Code of Conduct and that this be tabled in Parliament by the Minister for Foreign Affairs, be sent out to all ASIS applicants, and be made publicly available on request.**

55 ASIS, *Questions on Notice*, p.5.

56 ASIS, *Questions on Notice*, p.5.

57 ASIS, *Questions on Notice*, p.5.

Staff surveys

5.96 ASIO provided the Committee with information regarding the conduct of a staff survey in mid 2004. This information included the perceptions of staff concerning the organisational health of the agency, staff satisfaction in relation to careers and jobs and security practices.

5.97 The ASIO submission notes that this survey is in accordance with the requirements under the Blick Report. Further to this, a staff survey was conducted in 2001 in relation to retention rates within the agency. There had been a significant increase in the attrition rate in the agency within a short period (from 6.5 per cent in 1999 to 11.5 in 2001). This high attrition rate was of some concern to the Committee at the last review of administration and expenditure. The annual attrition rate had dropped to 5.6 per cent by 2003. In regards to the current level of attrition within ASIO, Mr Richardson stated:

....it is healthy for an organisation to have some churn. It is a matter of getting the right balance for that churn. We were not comfortable when it was up to 11 per cent, obviously. Around the six per cent mark is, I think, quite a healthy area for it to be in.⁵⁸

5.98 ASIO conducts an exit-interview with staff on separation from the organisation, 'to ensure identification of significant issues which may be contributing to a staff member's decision to leave.'

5.99 ASIS was asked whether the agency believed staff were satisfied in their working environment. ASIS gave evidence that a staff survey was undertaken in 2002 which was

extremely well supported by staff, with a participation rate above average for similar such surveys conducted in either the public or private sectors. Staff members also expressed an above average level of job satisfaction in comparison to statistics held on a national survey database accessed by the consultants conducting the survey.⁵⁹

In addition, ASIS stated:

ASIS staff similarly showed an above average level for satisfaction with the Service as an employer.⁶⁰

58 *Transcript*, p.41.

59 *ASIS, Questions on Notice*, p.9.

60 *ASIS, Questions on Notice*, p.9.

- 5.100 The organisation stated that this survey will provide a benchmark for future surveys to monitor agency attitudes and the health of the organisation.
- 5.101 DSD informed the Committee that it had conducted, 'three formal staff surveys since 1999.' DSD is intending to conduct a staff survey every year. The format of DSD surveys is directed towards several main themes. These themes are:
- demographics, such as rank, work location etc;
 - employee engagement (satisfaction);
 - organisational direction;
 - leadership, with sub themes of:
 - ⇒ immediate supervisor
 - ⇒ section head
 - ⇒ branch head
 - ⇒ corporate management committee
 - developing capability;
 - term transfers (DSD site issues);
 - equity issues;
 - health, safety and well being;
 - customer focus;
 - DSD values;
 - internal customer relationships;
 - communication; and,
 - security.
- 5.102 It is the intention of DSD to review the survey format annually so as to ensure that areas of concern are addressed.

Recommendation 8

- 5.103 **The Committee would like to encourage all intelligence agencies to undertake regular staff surveys and, if they are not already doing so, to make use of suggestions boxes that allow for anonymous feedback by staff. The Committee recommends that at each review of administration and expenditure the results of staff surveys are made available to the Committee for examination.**

Language skills and intelligence

- 5.104 The Report of the Inquiry into Australian Intelligence Agencies by Mr Philip Flood stated that the inquiry 'looked closely at the question of language skills of intelligence agencies.'⁶¹ The Flood Inquiry found some deficiencies in this area within ASIS, stating:

ASIS's skill base in this area is satisfactory, but not optimal. It has a strong cadre in some areas, but deficiencies in others. The inquiry recommended that ASIS should be provided with additional funding to bolster the key language capabilities of its staff.⁶²

- 5.105 This Committee also has concerns in relation to the language skills of intelligence agencies. Much has been said in the United States since September 11 about language weaknesses in the US intelligence system, particularly about the skills being undervalued and neglected. One US commentator has observed:

On the eve of September 11, millions of hours of Arabic-language intelligence tapes—some of which contained information that might have been used to anticipate the attacks - lay untranslated. ... During the fiscal year 2001, 68 percent of the [United States] army's positions for Farsi speakers and 50 per cent of its positions for Arabic speakers were unfulfilled.⁶³

- 5.106 Less has been said concerning language skills in the Australian intelligence community. One article written in the *Bulletin* magazine in April 2003 asserted that ASIO was 'hopelessly lacking in language skills,'

61 Philip Flood, *Report of the Inquiry into Australia's Intelligence Agencies*, July 2004, p151.

62 Philip Flood, *Report of the Inquiry into Australia's Intelligence Agencies*, July 2004, p151.

63 Anne O'Donnell, "The Translator Crisis: Speechless", *The New Republic*, 22 December 2003, p. 14.

and 'only two per cent (12 out of 600) of ASIO officers speak any Arabic. Some Arabic dialects are not spoken at all.'⁶⁴

- 5.107 Agency submissions to the Committee made scant reference to language skills. ASIO devoted only 7 lines to the matter of language skills and generally stated that the situation was satisfactory.

ASIO encourages and supports staff to update language skills.

ASIO continues to recruit linguists to ensure a close match between requirements and languages. No priority investigations are not being undertaken because of a lack of language skills.

ASIO officers assigned to overseas posts are provided with comprehensive language training utilising DFAT language training programs lasting up to 18 months. In most cases the ASIO liaison officers speak the language of the country to which they are posted.⁶⁵

- 5.108 However, only 10 percent of ASIO staff at December 2003 came from non English speaking backgrounds. The Committee recognises that English speaking officers may well be bilingual; however, no information was received about the number of officers who spoke foreign languages, what foreign languages were spoken or who could use them with sufficient fluency to translate and interpret effectively. In future reviews, the Committee would like to see a breakdown of staff language skills and training costs.

- 5.109 DSD made no reference to language skills in its submission but told the Committee that, to overcome identified deficiencies, they were in the process of expanding their language sets. No statistics were provided by DSD on the current languages available in the organisation.

- 5.110 Acquiring language skilled officers would appear to be one of the most difficult issues intelligence agencies face as they expand. Additional money does not produce an instant expansion in capacity. Facility with languages is a complex achievement and Australia's record in this area is poor. Prior to World War II Australia was a largely monolingual country and, while formal education in languages included French, German or Latin, it did not produce large numbers of fluent speakers. There was a push for the teaching of Asian languages in the 80s and early 90s, but many of the programs have fallen away.⁶⁶ Australia's advantages as a

64 John Lyons, "Welcome to his Nightmare", *The Bulletin*, 30 April 2003.

65 ASIO submission, p. 11.

66 George Quinn, lecturer in Asian Studies Faculty, ANU, argued in the *Canberra Times* in February 2004 that 'the Australian pool of university trained Asian language specialists had shrunk in the last 10 years.' No statistics were provided.

multicultural society, a situation particularly notable since the Second World War, have not translated into the building of a broad base of language skills from which many areas of the government or the economy might draw.

- 5.111 It is also worth noting that translating and interpreting are high level skills, so to be useful as translators or interpreters, even native speakers need considerable training and development. Fluency is needed in two languages. The issues underpinning this are broad national issues with significance to much wider areas than just effective intelligence and security. They are also important for trade and diplomacy.
- 5.112 The Committee's inquiry into the pre-war intelligence on Iraq made clear that language skills, cultural understanding and an understanding of the historical context in which intelligence assessments are made are all vital to good intelligence. There are, therefore, implications for the education system, for the preservation and promotion of the study of languages and cultural studies and the study of history in schools and universities. If Australia is to be well served in intelligence analysis, good linguists, whose skills are often transferable to a number of languages, and even good historians need to be valued and fostered and a financial commitment made to their development over the long term.
- 5.113 In the next Parliament, the Committee will consider whether this issue of language training and skills as it affects intelligence gathering and analysis might not warrant closer scrutiny through a separate inquiry.

Conclusions

Human resource management

- 5.114 All three intelligence agencies are under considerable pressure to expand. This pressure must be managed. To expand too fast could have negative long term consequences that could take decades to rectify and significantly undermine Australia's national security.
- 5.115 The Committee recognises the challenges involved in organisational expansion and the uniqueness of these challenges in regards to ASIO, ASIS and DSD. Human resource management is central to the proper management of organisational expansion as it is the area of administration that is responsible for recruitment, training and workplace relations. It is therefore an area of administration that is of considerable interest to this Committee.
- 5.116 In light of the significance of human resource management to current agency priorities, the Committee is concerned that little detail was

presented to the Committee by either ASIS or DSD through their submissions in regards to the human resource management of these agencies.

- 5.117 The Committee may conduct a more detailed review of human resource management so that issues such as recruitment strategies and language skills in Australian intelligence agencies can be more fully examined.

Information management

- 5.118 ASIO, ASIS and DSD were questioned in regards to their ability to manage increased information flow through their information systems.

- 5.119 Unlike ASIO and ASIS which are providers of human intelligence, DSD is a technologically focused intelligence collection agency. Of the three intelligence agencies overseen by this Committee, DSD has the largest budget and number of staff. Technological change, the higher operational tempo of the ADF which DSD supports and the increased volume of information flow which it processes would seem to be major challenges for DSD at the present time.

- 5.120 DSD is undertaking four major capital investment projects. Two of these relate to the improvement of DSD collection capabilities. The third project involves a major re-engineering of the organisation's internal information technology systems and super-computer processing capabilities. The fourth project concerns improving communications with an allied country. In addition to these four major projects, there a number of ongoing minor projects being undertaken.⁶⁷

- 5.121 The Committee questioned DSD about other significant initiatives that have been implemented to enhance defence intelligence capabilities for the next decade. The Committee was informed of three areas of activity.⁶⁸

- 5.122 ASIO reported that the flow of intelligence had grown at least five-fold since September 11 and that this growth is continuing. As a result ASIO's communications and information systems have been significantly upgraded: ASIO noted:

In summary, the growth in information flowing into the Organisation has put significant strain on systems and people. We believe we have the budget to invest in new capabilities which

67 *Transcript*, p.23.

68 *DSD, Questions on Notice*, p.4-5.

should allow us to get on top of the challenge over the next 2-3 years.⁶⁹

- 5.123 ASIS stated that the current focus on counter-terrorism has required the processing of much larger quantities of information than was previously the case. This has meant that some of ASIS's communication systems have proved inadequate with a consequent requirement to develop much greater capacity within the agency's communications platforms.

Risk management and contingency planning

- 5.124 Agency security arrangements must include contingency planning. In the event of a major disaster Australian intelligence agencies must have the ability to maintain their core functions. The Committee wished to ascertain from the agencies what consideration had been given to contingency planning in the instance where an agency might lose the ability to access their headquarters. The Committee questioned ASIS and DSD in regards to measures taken to ensure business continuity. Mr Merchant from DSD stated that :

This is still a reasonably new issue for us and, frankly, we have struggled with it a bit. The business continuity for DSD—in my opinion at least—is a bit more complicated than it is for a lot of other Australian intelligence agencies.⁷⁰

- 5.125 ASIS stated that the organisation had developed a business continuity plan.
- 5.126 While contingency planning for major disasters such as the loss of an agency headquarters is especially challenging, this should not inhibit immediate preparations to manage the lesser, but highly disruptive scenarios such as a protracted loss of electrical power in Canberra. Australia's agencies must have a robust capacity to continue operations in adverse circumstances.
- 5.127 The Committee shall continue to review business continuity planning and the agencies risk management strategies at future reviews.

69 ASIO, *Questions on Notice*, p. 8.

70 *Transcript*, p.31.

Other issues

- 5.128 The Committee questioned the agencies in regards to a number of other issues of importance to their proper administration. Although, these areas have not been pursued at length in this review, the Committee may pursue these matters in the future.

Performance management

- 5.129 The Committee sought information regarding the mechanisms employed to assess agency performance. There have been significant intelligence failures in the United States, United Kingdom and to a lesser extent Australia, in relation to the intelligence on Iraq stemming from failures in analysis, although it should be stated that this failure does not rest with ASIO, ASIS or DSD. The Committee does, however, note with concern comments of Mr Flood in the recent report into Australia's Intelligence Agencies:

Australian intelligence agencies should have known more before December 2001 about JI (Jemaah Islamiyah) as a group developing terrorist capabilities and intentions.⁷¹

- 5.130 The mechanisms and processes through which the performance of intelligence agencies is monitored are of considerable consequence both in terms of demonstrating the value for money that Australia gets out of our intelligence agencies and because of important implications for national security should our agencies be, 'getting it wrong'.
- 5.131 The Committee notes the various external and internal mechanisms that the agencies have in place for monitoring their performance and may well seek to follow up the issue of performance assessments at a later date.

Public reporting and accountability

- 5.132 In their submission to the review of administration and expenditure, ASIO provided information on the agency's public reporting and how this has complied with the recommendations of the Parliamentary Joint Committee on ASIO (the forerunner to the Parliamentary Joint Committee on ASIO, ASIS and DSD). Of the three agencies, ASIO has significantly greater public reporting. On the subject of public reporting Mr Richardson commented:

71 Philip Flood, *Report of the Inquiry into Australian Intelligence Agencies*, p.41.

With the nature of the job and the organisation, public reporting is a skill that we are all still learning. Essentially you are not paying people to be in ASIO to be good at writing possible parliamentary questions and the like—that is a developed skill. However, we are now bang in the middle of that because we are much more in the public domain. Ministers understandably require a lot more briefing on what they can say publically, and that has been quite a cultural change.⁷²

5.133 While much of the activities of DSD and ASIS are rightly classified, there may be significantly more information that can be made publicly available without any negative impact on Australia's national security. For example, the Committee is not convinced of the need for ASIS to produce only a classified Code of Conduct.

5.134 It is envisaged that a review may need to be undertaken by the Committee into the issue of public reporting and accountability. Intelligence agencies, like any other publicly funded organisation, must give consideration to providing publicly available information on matters of their administration.

5.135 The Committee recognises that organisations such as ASIS have long histories of secrecy. In relation to operational matters, the need for the highest level of secrecy is obvious. However, unnecessary secrecy hinders proper scrutiny. It is the expectation of this Committee that, as has been the case with ASIO over time, other intelligence agencies that this Committee oversees should provide more publicly available information with regards to appropriate matters. As Mr Flood notes:

... the need for secrecy should be no bar to a robust, effective and occasionally intrusive system of accountability. Where possible, intelligence agencies should be subject to the same scrutiny mechanisms as other parts of government.⁷³

Recommendation 9

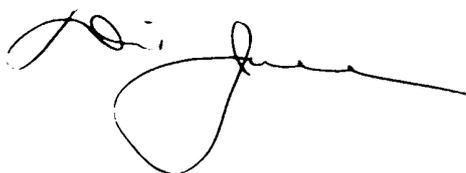
5.136 That a review be undertaken on the extent of public reporting across all the intelligence agencies overseen by the Committee.

72 *Transcript*, p.44.

73 Philip Flood, *Report of the Inquiry into Australian Intelligence Agencies*, July 2004, p.51.

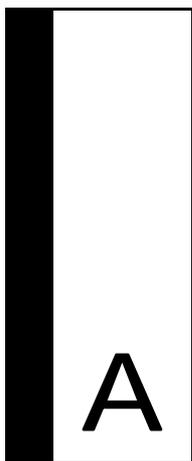
Relationship between ASIO and law enforcement agencies

5.137 The Committee questioned ASIO in relation to its relationship with the AFP. It is apparent to the Committee that the AFP, State Police Forces and ASIO have complementary but different roles and that with the expansion of the AFP as well as State Police Forces into counter-terrorism and intelligence areas and the expansion of ASIO's powers, these roles may be undergoing some re-adjustment. The Committee recognises this area as requiring a more detailed examination of the issues than can be offered in this review of administration and expenditure.

A handwritten signature in black ink, appearing to read 'David Jull', with a long horizontal stroke extending to the right.

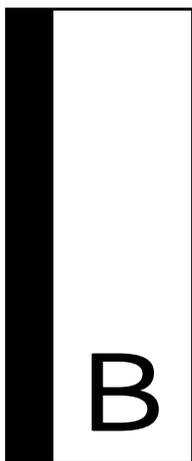
The Hon David Jull, MP

Chairman



Appendix A – List of Submissions

1. Australian National Audit Office
2. Australian Secret Intelligence Service
3. Defence Signals Directorate
4. Australian Security Intelligence Organisation



Appendix B – Witnesses appearing at Private Hearings

Canberra - Thursday, 25 March 2004

Australian National Audit Office

Canberra – Thursday, 6 May 2004

Mr David Irvine – Director-General, Australian Secret Intelligence Service

Deputy Director-General, Corporate Services, Australian Secret Intelligence Service

Chief Financial Officer, Australian Secret Intelligence Service

Mr Stephen Merchant, Director, Defence Signals Directorate

Finance Officer, Defence Signals Directorate

Assistant Secretary Executive, Defence Signals Directorate

Mr Dennis Richardson, Director-General, Australian Security Intelligence Organisation

Assistant Director, Government Communications, Australian Security Intelligence Organisation

Chief Finance Officer, Australian Security Intelligence Organisation

First Assistant Director-General, Corporate Management and Liaison Division, Australian Security Intelligence Organisation

