

The Parliamentary Joint Committee on Intelligence and Security

- 1.1 Section 28 of the *Intelligence Services Act 2001* (the IS Act) establishes the Parliamentary Joint Committee on Intelligence and Security. The Act governs its size, structure, functions, procedures and powers. This report is made in compliance with section 31 of the Act which states that:

As soon as practicable after each year ending on 30 June, the Committee must give to Parliament a report on the activities of the Committee during the year.

- 1.2 However, due to the Federal Election on 21 August 2010 this report, covering Committee activities for the 42nd Parliament, is now being tabled.

Size and Structure

- 1.3 Section 28 (2) (3) of the IS Act stipulates that the Committee is a joint Committee of Parliament comprised of nine members, five government members and four opposition members. Of the five government members, three are from the House of Representatives and two are from the Senate. The Opposition members are comprised of two members of the House and two Senators.
- 1.4 Members are appointed by resolution of the House or the Senate on the nomination of the Prime Minister or the leader of the Government in the Senate. Prior to nomination, consultation must take place with the leaders of recognised parties in each of the Houses.
- 1.5 The size and structure and membership of the Committee remained unchanged.

Functions

- 1.6 Under section 29 of the IS Act, the Committee is charged with reviewing the administration and expenditure of all six intelligence agencies: ASIO, ASIS, DSD, DIGO, DIO and ONA. Other matters may be referred by the responsible Minister or by a resolution of either House of the Parliament. In addition to this function, the Committee is required to review the operation, effectiveness and implications of:
- The amendments made by the *Security Legislation Amendment (Terrorism) Act 2002* and the following acts:
 - ⇒ *the Border Security Legislation Amendment Act 2002*;
 - ⇒ *the Criminal Code Amendment (Suppression Terrorist Bombings) Act 2002*; and
 - ⇒ *the Suppression of the Financing of Terrorism Act 2002*;
 - Division 3 of Part III of the *Australian Security Intelligence Organisation Act 1979*; and
 - the 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*)
- 1.7 Amendments made to the *Criminal Code Act 1995* (the Criminal Code), made in March 2004, further tasked the Committee with reviewing regulations which specify organisations as terrorist organisations for the purposes of section 102.1 of the Criminal Code. The Committee's findings on its reviews of these regulations are to be tabled before the end of the disallowance period, 15 sitting days from the tabling of the regulation.
- 1.8 As has been the case in previous years a large component of the Committee's work consisted of reviews of the listing of organisations as terrorist organisations, a requirement under the Criminal Code. Two reviews of the listing of organisations as terrorist organisations, covering five organisations comprising four re-listings and one initial listing were completed in 2009-10.

Procedures and powers

- 1.9 The Committee is a statutory committee. Section 29 of the IS Act outlines the oversight capacity of the Committee. However unlike other statutory or standing committees of Parliament there are specific limitations in this section with regard to the Committee's capacity to inquire into operational

matters and the intelligence gathering and assessment priorities of the relevant intelligence agencies.¹ Again the Committee reiterates that, due to this limitation, balancing national security and parliamentary scrutiny remains a challenge for the Committee.² Despite these constraints, the Committee is ever mindful of its critical role in ensuring that Australia's intelligence agencies remain accountable through continuous public scrutiny.

- 1.10 Authority to inquire into special cases and operational matters lies with the Inspector General of Intelligence and Security (IGIS) under the *Inspector General of Intelligence and Security Act 1986*. In conjunction with the IGIS the Committee provides essential bi-partisan oversight of the AIC.
- 1.11 Specific prohibitions on the Committee's activities include the following:
- Reviewing the intelligence gathering priorities of the agencies;
 - Reviewing sources of information, other operational assistance or operational methods available to the agencies;
 - Reviewing particular operations past, present or proposed;
 - Reviewing sources of information provided by a foreign government or its agencies, without the consent of that government to the disclosure;
 - Reviewing an aspect of the activities of the agencies that does not affect an Australian person;
 - Reviewing rules with the Act relating to the privacy of Australian citizens; or
 - Conducting inquiries into individual complaints in relation to the activities of the agencies.³
- 1.12 The IS Act also specifies the Committee's powers in relation to requesting witnesses and the production of documents. Clause 2 of Schedule 1 specifies that the Committee may give a person written notice requiring the person to appear before the Committee with at least 5 days notice, as well as notice of any documents required by the Committee.⁴

1 This limitation is contained within section 29(3) of the *Intelligence Services Act 2001*.

2 *Annual Report of Committee Activities 2005-2006*, September 2006, p. 3.

3 *Annual Report of Committee Activities 2005-2006*, September 2006, p. 3.

4 *Annual Report of Committee Activities 2005-2006*, September 2006, p. 3.

- 1.13 The Minister may prevent the appearance of a person (not an agency head) before the Committee to prevent the disclosure of operationally sensitive information either verbally or in a document. To achieve this, the Minister must provide a certificate outlining his opinion to the presiding member of the Committee, to the Speaker of the House of Representatives, the President of the Senate and the person required to give evidence or produce documents.⁵ There were no cases where this power was exercised during the year in review.
- 1.14 The IS Act also contains a protection, under subclause 7(1) of Schedule 1, against the disclosure in Committee reports of operationally sensitive information, namely:
- the identity of a person who is or has been a staff member of ASIO, ASIS or DSD; or
 - any information from which the identity of such a person could reasonably be inferred; or
 - operationally sensitive information that would or might prejudice:
 - ⇒ Australia's national security or the conduct of Australia's foreign relations; or
 - ⇒ the performance by an agency of its functions.⁶
- 1.15 Unlike the reports of other parliamentary committees which are privileged documents which may not be disclosed to anyone outside the committee itself until after tabling, the Intelligence and Security Committee must obtain the advice of the responsible Minister or Ministers as to whether any part of a report of the Committee discloses a matter referred to in subclause 7(1) of Schedule 1. A report may not be tabled until this advice is received.⁷
- 1.16 Lastly, to protect the national security status of the Committee's work and to maximise the Committee's access to information, the IS Act requires that staff of the Committee must be cleared for security purposes to the same level and at the same frequency as staff members of ASIS.
- 1.17 In addition to the security requirements for staff all new members of the Committee in 2008-09 were informed of the main legislation governing information regarding the AIC.
-

5 *Intelligence Services Act 2001*, clause 4 of Schedule 1.

6 *Intelligence Services Act 2001*, subclause 7(1) of Schedule 1.

7 *Intelligence Services Act 2001*, subclause 7(3) of Schedule 1.

- 1.18 This information to members specifies that Section 92 of the *ASIO Act 1979* makes it illegal to divulge the names of employees or former employees of ASIO. Section 41 of the IS Act makes it illegal to divulge the names of employees of ASIS. Sections 39, 39A and 40 of the IS Act make it illegal to divulge the names of employees or former employees of ASIS, DIGO and DSD. These sections also make it illegal to divulge information connected with functions of or information that relates to performance of functions of ASIS, DIGO and DSD. Members were also informed that this prohibition extends to information Committee members receive at briefings by these agencies.

Reports and Activities 2009-2010

- 1.19 Since the last annual report on the Committee's activities, tabled in October 2009, the Committee has tabled five reports. In this financial year, this total has consisted of one review of re-listing of four terrorist organisations, one review of the initial listing of a terrorist organisation, and three reviews of the administration and expenditure of the six intelligence agencies.
- 1.20 The Committee has also undertaken a number of inspections of various facilities relevant to each of the six intelligence agencies.

Administration and Expenditure Reviews

- 1.21 Reviewing administration and expenditure on an annual basis is one of the primary functions of the Committee. Section 29 of the IS Act stipulates that the Committee has an obligation to review the administration and expenditure of ASIO, ASIS, DSD, DIO, DIGO and ONA including the annual financial statements.
- 1.22 In 2008-09 the Committee conducted a broad review of the administration and expenditure of the six intelligence and security agencies for the 2006-07 financial year. The subsequent report *Review of administration and expenditure: Australian Intelligence Organisations, Number 6* was tabled in Parliament in September 2009.⁸
- 1.23 In 2009-10 the Committee conducted a broad review of the administration and expenditure of the six intelligence and security agencies for the 2007-08 financial year. The subsequent report *Review of administration and*

8 The inquiry process was delayed due to the 2007 Federal election.

expenditure: Australian Intelligence Organisations, Number 7 was tabled in Parliament in May 2010.

- 1.24 In addition, in 2010 the Committee conducted a broad review of the administration and expenditure of the six intelligence and security agencies for the 2008-09 financial year. The subsequent report *Review of administration and expenditure: Australian Intelligence Organisations, Number 8* was tabled in Parliament in June 2010.
- 1.25 Further details on these reports into administration and expenditure follow.

Review of the Administration and Expenditure of the Australian Intelligence Agencies No. 6 (2006/07)

- 1.26 This review was the second full review of the administration and expenditure of the six intelligence agencies since the IS Act was amended in December 2005 to add DIGO, ONA and DIO to the Committee's oversight functions. This review looked broadly at all aspects of the agencies administration and expenditure rather than selecting a specific focus. As with all such reviews undertaken by the Committee, it was conducted in private. It was not publicly advertised and submissions were sought only from each of the six intelligence agencies, the Australian National Audit Office (ANAO) and the Inspector General of Intelligence and Security (IGIS).
- 1.27 All six agencies were represented by their respective Agency Head and other relevant staff at a number of private hearings held on Monday 25 August 2008, Thursday 28 August 2008, Thursday 16 October 2008 and Thursday 13 November 2008. The final report was tabled in Parliament on 7 September 2009.
- 1.28 Overall, the Committee was satisfied that the administration and expenditure of the six intelligence agencies was sound. Working within the constraints of not including any classified information, the Committee examined a wide range of issues relating to each of the agencies. Some of these issues included the reorganisation and consolidation of agency structures, the impact of recent legislative changes, accommodation pressures, budget growth, financial governance systems and human resource management including training, recruitment and separation rates.

- 1.29 In terms of human resource management, the Committee found that maintaining adequate levels of language skills, particularly with expertise in local minority dialects, remained a challenge for a number of agencies in 2006-07. The Committee heard evidence that some agencies had employed contractors to provide the relevant skills in minority dialects. This presented difficulties in having them cleared to the appropriate TSPV level and the Committee expressed concerns that it was provided with no evidence that these contractors enhanced the agencies linguistic skills or value added to linguistic capacity. However the Committee was satisfied that the agencies recognised this challenge and would take adequate measures to address it.
- 1.30 Performance management and evaluation continued to be a high priority for the agencies, with some of the agencies developing a more user friendly intelligence product and initiating more stakeholder engagement programs, annual customer surveys and formal performance reviews.
- 1.31 The Committee also examined e-security challenges facing the agencies and whether there was sufficient resources being put into this area to mitigate the risk it presents. The Committee noted that this is an area which will require significant resources and cross-portfolio collaboration. The Committee undertook to maintain an interest in this issue.
- 1.32 Agency expenditure was also found to be sound overall. This was despite the challenges faced by the agencies in terms of considerably increased budgets and the rapid and large-scale recruitment of staff.
- 1.33 The Committee made one recommendation regarding increasing funding within a particular agency in order to maintain adequate staffing levels and skills for a vital capability within that agency. The detail of this recommendation was classified and was provided to the relevant Minister.

Review of the Administration and Expenditure of the Australian Intelligence Agencies No. 7 (2007/08)

- 1.34 This review was the third full review of the administration and expenditure of the six intelligence agencies. This review looked broadly at all aspects of the agencies administration and expenditure rather than selecting a specific focus. As with all such reviews undertaken by the Committee, it was conducted in private. It was not publicly advertised and submissions were sought only from each of the six intelligence agencies, the Australian National Audit Office (ANAO) and the Inspector General of Intelligence and Security (IGIS).

- 1.35 The review examined a wide range of aspects of the administration and expenditure of the six intelligence and security agencies, including the organisation of agency structures, the impact of recent legislative changes, human resource management, recruitment, workplace diversity, training and development, security clearances and assessments, accommodation and expenditure, including financial governance, the efficiency dividend and budget growth.
- 1.36 With regard to the organisation of agency structures, the Committee found that five out of the six agencies had amended their structures in 2007-08. These amendments were the result of recommendations made via external reviews of agency management, changing customer service needs and budget measures.
- 1.37 In relation to the management of growth within the agencies, the Committee noted that due to the competitive job market, some agencies experienced difficulty in recruiting high calibre staff. For other agencies, growth has placed pressure on leadership, training and human resource information systems. In response, the agencies implemented a mixture of reforms to their training programs and human resource management systems.
- 1.38 Recruitment remained a high priority for each of the agencies in 2007-08 with many agencies investing significant resources into reviewing and developing their recruitment strategies. Training and Development also remained a high priority. Most agencies reported participating in AIC wide training programs for both new recruits and senior officers. These programs are aimed at providing an understanding of how the AIC works collaboratively to meet intelligence needs and enhances our national security posture.
- 1.39 The Committee also noted that, all agencies conduct staff surveys annually or biennially. Those agencies who conducted surveys during 2007-08 reported the results of these to the Committee. The Committee notes that staff surveys are an important tool for gauging workforce morale, assessing the effectiveness of management, and issues relating to staff recruitment and retention from an employee's perspective. The committee is pleased to see that all agencies use them.
- 1.40 With regard to expenditure, as well as looking at budget growth and fraud control systems, the Committee also looked into the impact of the efficiency dividend on some of the smaller agencies within the AIC. The Committee heard they are managing the impact without any serious loss of performance and have not experienced any degradation of capability.

- 1.41 The Committee was satisfied that the administration and expenditure of the six intelligence and security agencies is sound.

Review of the Administration and Expenditure of the Australian Intelligence Agencies No. 8 (2008/09)

- 1.42 This review was the fourth full review of the administration and expenditure of the six intelligence agencies. This review looked broadly at all aspects of the agencies administration and expenditure rather than selecting a specific focus. As with all such reviews undertaken by the Committee, it was conducted in private. It was not publicly advertised and submissions were sought only from each of the six intelligence agencies, the Australian National Audit Office (ANAO) and the Inspector General of Intelligence and Security (IGIS).
- 1.43 During this review the Committee found that a significant inconsistency exists in the Committee's oversight of the AIC. The Committee took evidence from a number of the agencies that they have attachments or secondments within the AFP. Since the September 11 terrorist attacks in the United States and terrorist attacks in Bali, the AFP has been increasingly involved in counter-terrorist activities and there are sections of the AFP that have been created to address significant counter-terrorism and national security functions.
- 1.44 It was clear to the Committee that the AFP has evolved to include a significant intelligence function and that sections of the AFP have deep operational and intelligence linkages with the AIC. The Committee therefore recommended that the *Intelligence Services Act 2001* be amended to include AFP counter-terrorism elements in the list of organisations that the Committee reviews.
- 1.45 The Committee also examined the issue of access to information beyond administration and expenditure. In the Committee's view, it would be helpful while conducting reviews of the Administration and Expenditure of the AIC to have knowledge of their activities, operations, skills, methods and the product they create all being made available to the Committee. This has been acknowledged by previous Committees and by the AIC.
- 1.46 The Committee recognised that the drafting of such an amendment would be difficult and would require close consultation with the agencies and the Committee.
- 1.47 The Committee acknowledged that it has regularly received good cooperation from the AIC.

- 1.48 The Committee therefore recommended that the Government agree to amend the *Intelligence Services Act 2001* to enable specific material which does not affect current operational activity to be provided to the Committee. A small working group drawn from relevant Departments, Agencies, and the Committee should be set up to prepare this amendment for consideration by the Government.
- 1.49 The Committee also noted the continuing challenge which e-security presents to the agencies. Threats in an e-security environment are complex and challenging and it is reasonable to assume that these threats may increase over the coming years. Threats to Australia's e-security can also change rapidly and diversify without warning. The skills required to respond to these threats take considerable time and resources to develop.
- 1.50 The Committee appreciates the focus being given to these challenges by the AIC and noted the significant additional investment of resources in this area, such as the Cyber Security Operations Centre, being undertaken by the Australian Government. However due to the challenging nature of the e-security environment the Committee recommended that the Australian Government monitor resources allocated to e-security to ensure that they are adequate.
- 1.51 During this inquiry the Committee sought evidence in relation to the accommodation situation faced by the agencies. One agency stated to the Committee that they are 'split into a couple or more locations' in Canberra. As a result the Committee recommended that the Australian Government review the medium and long term accommodation requirements of those members of the AIC presently housed in multiple locations in Canberra. Where multiple locations for a single agency diminish operational effectiveness or efficiency consideration should be given to planning alternative longer term accommodation at the one site.
- 1.52 The review also examined archival practices as a result of the Government's proposal to reduce the open access period specified in the *Archives Act 1983* from 30 to 20 years. The Committee took evidence from all the agencies that moving from a 30 year archiving regime to a 20 year regime would result in an increased workload and increased redactions.
- 1.53 On the evidence available, the Committee concluded that a document released at 20 years would be more redacted than one released at 30 years. This would have the unintended consequence of providing less information to the public than at present although providing it 10 years earlier. The Committee recommended that, should the proposal to amend the open access period of the *Archives Act 1983* proceed, consideration

should be given to special provisions for AIC documents to be exempted, on a case by case basis, from release at 20 years.

- 1.54 During its report *Review of administration and expenditure: Australian Intelligence Organisations, Number 7* it became clear to the Committee that issues relating to the efficiency dividend and its impact on agencies outside of the AIC apply equally to smaller agencies within the AIC. The Committee advised that it would continue to monitor the impact of the efficiency dividend on all the agencies.
- 1.55 No additional information was received from agencies and no agency reported any degradation of capability in relation to the efficiency dividend. However ONA's submission stated that, as a result of the dividend, there would be 'some modest reduction in ONA's analytical capacity'. Another agency stated that any additional reduction in their budget would significantly impact their operational activities.
- 1.56 The Committee remains concerned about the impact of the efficiency dividend on the smaller agencies of the AIC and therefore recommended that the Australian Government review the potential adverse effects of the efficiency dividend on the AIC having particular regard to the Joint Committee of Public Accounts and Audit report *The efficiency dividend and small agencies: Size does matter*.
- 1.57 The Committee also took the opportunity afforded by this review to look at the budget of the Office of the Inspector General of Intelligence and Security (OIGIS). The OIGIS' budget has not grown in line with ASIO's budget growth. In light of the increases in the number of personnel and activities of the AIC as well as an expansion in the IGIS' role the Committee recommended that the budget of the OIGIS be increased.

Criminal Code Act 1995 – The proscription of terrorist organisations

- 1.58 Two reports on the listing of organisations as terrorist organisations were tabled in the period under review. The two reports dealt with five organisations comprising four re-listings and one initial listing.

Review of the re-listing of Hamas' Izz al-Din al-Qassam Brigades (the Brigades), Kurdistan Workers Party (PKK), Lashkar-e-Tayyiba (LeT), and Palestinian Islamic Jihad (PIJ) as terrorist organisations under the Criminal Code Act 1995

- 1.59 The regulations under review specified Hamas' Izz al-Din al-Qassam Brigades (the Brigades), Lashkar-e-Tayyiba (LeT), Kurdish Workers Party (PKK) and Palestinian Islamic Jihad (PIJ) as terrorist organisations for the purposes of section 102.1 of the *Criminal Code Act 1995*.

- 1.60 This was a review of the re-listing of these organisations.
- 1.61 In a letter received by the Committee on 7 September 2009, the Attorney-General advised that he intended to re-list these organisations prior to the lapsing of their current listing as provided for in section 102.1(3). The Attorney provided statements of reasons for the re-listings. This was accepted as submission number one to the review.
- 1.62 The regulations were tabled in the House of Representatives and the Senate on 9 September 2009. The disallowance period of 15 sitting days for the Committee's review of the listing began from the date of the tabling. Therefore the Committee has conducted its review to enable it to report to the Parliament by 17 November 2009.
- 1.63 Notice of the review was placed on the Committee's website on 11 September 2009. The inquiry was advertised in *The Australian* on 16 September 2009 (see Appendix C). Submissions were due to be received by 6 October 2009. Three public submitters sought and were granted extensions to the submission time.
- 1.64 Seven public submissions were received.
- 1.65 The Committee held a hearing on 22 October 2009 in which the following people/organisations appeared:
- Australian Kurdish Association and the Kurdish Association of Victoria
 - Federation of Community Legal Centres (Vic) Inc
 - Dr Patrick Emerton
 - Attorney-General's Department
 - Australian Security Intelligence Organisation

Hamas' Izz al-Din al-Qassam Brigades (the Brigades)

- 1.66 The Brigades are the armed element of the military wing of Hamas. While the Brigades are an integral part of Hamas, they also operate independent of, and times at odds with, Hamas' stated aims. Hamas, through the Brigades, seeks to destroy the state of Israel and establish an Islamist Palestinian state in the existing Gaza Strip, West Bank and Israel. It will not enter into peace talks with Israel and its leaders have stated Hamas cannot live with an Israeli state.
- 1.67 The Committee sought information on why Hamas' Brigades were listed and Hamas was not. ASIO informed the Committee that when ASIO has information that only part of an organisation satisfies the statutory

requirements for listing only that part of the organisation will be put forward for proscription. This is the case with Hamas' Brigades.

- 1.68 The statement of reasons listed numerous attacks against Israeli civilians. The three most recent were:
- November 2008: the Brigades announced on its website it had fired a total of 43 Qassam rockets and a number of mortar shells at several Israeli civilian and military targets;
 - November 2008: five Grad rockets were fired from the Gaza Strip at the Israeli city of Ashqelon; and
 - January 2009: numerous rockets fired into Israel.
- 1.69 In addition to the well known attacks against Israel the Brigades also carry out brutal suppression against the Palestinian people. For example, in August 2009 Hamas' Brigades launched a devastating attack against a mosque in Rafah. The attack killed at least 22 Palestinians, including an 11-year-old girl.
- 1.70 The Committee did not recommend disallowance of the regulation in relation to Hamas' Brigades.

Kurdistan Workers Party (PKK)

- 1.71 Since 1995, the PKK has been involved in many terrorist attacks, including suicide bombing attacks, which have resulted in large numbers of civilian casualties. These terrorist attacks have been directed against not only Turkish security forces, but also against civilian and foreign targets.
- 1.72 During the course of its review the Committee became aware of some moves towards peace between the PKK and the Turkish government. ASIO assured the Committee that substantive peace discussions could be one trigger that led to them advising the Attorney-General to de-list the PKK.
- 1.73 None of the submissions to the Committee's inquiry denied that the PKK had been involved in terrorist acts that satisfy the statutory criteria for re-listing. The Committee does not recommend disallowance of the regulation in relation to the PKK.

Lashkar-e-Tayyiba (LeT)

- 1.74 Lashkar-e-Tayyiba, who maintain links to the Taliban and al-Qa'ida, is one of the most active of the Pakistan based Kashmiri militant groups and represents one of the most significant threats to security forces and civilians in Indian-administered Kashmir and beyond.

- 1.75 Although the LeT formally denied any involvement, the most significant operation conducted by LeT were the attacks on multiple targets in the Indian city of Mumbai between 26-29 November 2008 in which 172 persons were killed and at least 248 were wounded.
- 1.76 The Committee did not recommend disallowance of the regulation in relation to LeT.

Palestinian Islamic Jihad (PIJ)

- 1.77 Palestinian Islamic Jihad PIJ is considered to be one of the more militarily effective of the Palestinian militant groups and it has a significant presence in the Gaza and the West Bank and rejects the idea of any political process with Israel.
- 1.78 The Committee noted that the statements it made about the Hamas Brigades putting Palestinian civilians at risk by firing rockets into Israel from civilian areas applied equally to the PIJ.
- 1.79 The Committee did not recommend disallowance of the regulation in relation to the PIJ.

Review of the listing of Al-Shabaab as a terrorist organisation

- 1.80 The regulation under review specified Al-Shabaab as a terrorist organisation for the purposes of section 102.1 of the *Criminal Code Act 1995*.
- 1.81 This was a review of the initial listing of this organisation.
- 1.82 In a letter received by the Committee on 11 August 2009, the Attorney-General advised that he intended to list this organisation and provided statements of reasons for the listing. This was accepted as submission number one to this review.
- 1.83 The regulations were tabled in the House of Representatives and the Senate on 7 September 2009. The disallowance period of 15 sitting days for the Committee's review of the listing began from the date of the tabling. Therefore the Committee conducted its review to enable it to report to the Parliament by 29 October 2009.
- 1.84 The Committee heard evidence that Al-Shabaab engages in, and offers support for terrorist acts.
- 1.85 There were a number of media reports in relation to this listing and recent criminal charges relating to preparation for a terrorist attack on the Australian Army base at Holsworthy in New South Wales and aiding and

abetting the commission of an offence against section 6(1) of the *Crimes (Foreign Incursions and Recruitment) Act 1978* by another person to undertake armed hostilities in Somalia.

- 1.86 The Committee raised concerns with the Attorney-General's Department that this listing might be seen to interfere with or be prejudicial to the court proceedings in relation to the above charges.
- 1.87 The Attorney-General's Department pointed out that none of the charges related to membership of a terrorist organisation and that this listing would not affect the proceedings or make it easier for the Commonwealth to prove its case against the accused.
- 1.88 Al-Shabaab, or 'the youth', is the name applied to the Somali militant group which was formerly the most prominent of the militia groups comprising the militant wing of the Council of Islamic Courts (CIC). Al-Shabaab encompasses a range of elements, including those focused solely on the domestic insurgency in Somalia to elements that support al-Qa'ida's global ideology of violent extremism. Elements of al-Shabaab are linked to al-Qa'ida through leadership contacts and training, both recent and historical, and by al-Qa'ida senior leadership endorsement of its activities.
- 1.89 Al-Shabaab has prepared, planned and carried out frequent attacks as part of its violent insurgency since the beginning of 2007. Its tactics have included mortar attacks, and use of rocket-propelled grenades and firearms. During 2007, elements of al-Shabaab appear to have drawn inspiration from violent extremists in Afghanistan and Iraq, and adopted their tactics of Vehicle Borne Improvised Explosive Devices (VBIEDs), roadside bombs and suicide attacks. Suicide-vehicle bombings in Hargeysa and Boosaaso, northern Somalia, in October 2008 have been widely attributed to al-Shabaab.
- 1.90 In view of the information presented to it the Committee did not recommend to Parliament that the regulation be disallowed.

Inspections, visits and conferences

Visit to Defence Installation at Pine Gap, Northern Territory

- 1.91 From 14–15 July 2009, the Committee visited Defence installations at Pine Gap in the Northern Territory.

The International Intelligence Review Agencies Conference 2010

- 1.92 Since 2002, the Committee has sent representatives to the biennial conference of oversight agencies. In 2002 the conference was held in London, in 2004, in Washington, in 2006, in South Africa and, in 2008, in New Zealand. In 2010, the conference was hosted by the PJCIS and the IGIS in Sydney between Sunday, 21 March 2010 and Wednesday, 24 March 2010.
- 1.93 Attending on behalf of the PJCIS were:
- Chair of the PJCIS, the Hon Arch Bevis MP;
 - Deputy Chair of the PJCIS, the Hon Philip Ruddock;
 - The Hon Mr Mark Dreyfus QC MP; and,
 - Senator Michael Forshaw.
- 1.94 Since its inception in Australia in 1997 the conference has become larger and more elaborate. In 2010, the following countries sent delegates:
- Australia:
 - ⇒ Parliamentary Committee on Intelligence & Security;
 - ⇒ Inspector General of Intelligence and Security.
 - Belgium:
 - ⇒ Standing Intelligence Agencies Review Committee.
 - Canada:
 - ⇒ Security Intelligence Review Committee;
 - ⇒ Office of the Communications Security Establishment Commissioner;
 - ⇒ Office of the Inspector General of the Canadian Security Intelligence Service.
 - New Zealand:
 - ⇒ Inspector General of Intelligence and Security;
 - ⇒ Commissioner of Security Warrants.
 - Poland:
 - ⇒ Bureau of the Committee on Special and Intelligence Services of the Chancellery of the Prime Minister.
 - Republic of South Africa:
 - ⇒ Office of the Inspector General of Intelligence.

- United Kingdom:
 - ⇒ Intelligence and Security Committee.
- United States of America:
 - ⇒ Office of the Inspector General, Defense Intelligence Agency;
 - ⇒ Office of Assistant to the Secretary of Defense for Intelligence Oversight;
 - ⇒ Office of Inspector General, National Geospatial Intelligence Agency;
 - ⇒ Office of Inspector General, CIA;
 - ⇒ Office of Inspector General, National Reconnaissance Office.

1.95 The program was as follows:

Sunday 21 March 2010

- 1730: Cocktail function located in the Harbour Room (delegates and partners)

Monday 22 March 2010

- -0845: Welcome and introductory remarks from The Hon Arch Bevis MP and Mr Ian Carnell - Australia
- 0845-1015: Chair, Mr Cecil Burgess (Chairperson, Joint Standing Committee on Intelligence, Republic of South Africa)
 - ⇒ Plenary: Each participating country was asked if they wished to give a short presentation on any significant developments in the oversight framework in their country, and five countries indicated that they would present.
 - Australia
 - Belgium
 - Sweden
 - The Netherlands
 - United States of America
- 1015-1045: Morning tea break
- 1045-1130: Address - How Ombudsmen review and influence public administration
 - ⇒ Speaker: Professor John McMillan, AO (Commonwealth Ombudsman, Australia)
- 1130-1300: Chair, The Hon Gary Filmon P.C., O.M. (Chair, Security Intelligence Review Committee, Canada)

⇒ Plenary: Three panellists (10mins each):

- Ms Lanie D'Alessandro (Inspector-General, NRO, United States of America)
- Ms Eva Plunkett (Inspector-General, CSIS, Canada)
- Mr Bert van Delden (Chairman, CTIVD, The Netherlands)

- Reviewer approach and impact. Focus on compliance vs focus on performance and how these approaches play out in the reviewer's effectiveness in terms of effecting or influencing the agencies reviewed in respect of their culture, internal governance, fraud awareness and prevention. How far should reviewers go in terms of making findings and/or recommendations? Review retrospective or current operations? Should reviewers advise on the formulation of internal rules of the agencies?
- 1400-1515: Natural justice - Introductory speaker: Professor John McMillan, AO (Commonwealth Ombudsman, Australia)
 - ⇒ The general principles of natural justice
- 1545-1700: Chair, The Hon Paul Neazor CNZM (Inspector-General of Intelligence and Security, New Zealand)
 - ⇒ Reports back and plenary session about natural justice

Tuesday 23 March 2010

- 0900-1015: Breakout sessions on effective review:

Commentator: Mr J William (Bill) Galbraith (Director of Operations, Office of the Communications Security Establishment Commissioner, Canada)

- ⇒ Group 1 – How a reviewer might best manage their own activities e.g. staff recruitment/mix/development, building teams, review targeting and plans, performance indicators and measurement.

Commentator: Mr George Ellard (Inspector-General, NSA, United States of America)

- ⇒ Group 2 – What role should reviewers play in commenting on legislation, particularly counter-terrorism legislation?

Commentator: The Right Honourable Sir Peter Gibson (Intelligence Services Commissioner, United Kingdom)

- ⇒ Group 3 – How do you maintain your independence while continuing to work with the agencies? What standards beyond

legislation should reviewers seek to apply e.g. international human rights? How do you gauge community standards of fairness?

- 1045-1200: Chair: Mr Peter De Smet (Board Member, Standing Intelligence Agencies Review Committee, Belgium)
⇒ Reports back and plenary session about effective review.
- 1200-1230: Group photograph
- 1400-1500: Breakout sessions on sensitive groups:
- 1530-1700: Chair, The Hon Arch Bevis MP (Chair, Parliamentary Joint Committee on Intelligence and Security, Australia)
- 1800: Conference Dinner (delegates and partners)
⇒ Speaker: Mr Dennis Richardson AO, Secretary, Department of Foreign Affairs and Trade, Australia

Wednesday 24 March 2010

- 0900-1000: Chair, Mr Scott Dahl (Deputy Inspector-General, Office of the Director of National Intelligence, United States of America)
⇒ Flexible plenary session: an opportunity for participants to raise particular questions on which they would value hearing the comments or the experiences of other participants.
- 1030-1200: Chair, United Kingdom (ISC)
⇒ Challenge - Can a reviewer of an intelligence agency really provide reassurance? Four speakers – two delegates to argue that reviewers can provide strong reassurance about the activities of agencies and two delegates or outsiders challenged whether reviewers can realistically do so, given the constraints such as those imposed by classified material and still being within the public sector.
- 1200-1230: General forum, wind-up – hand over to Canada.

Visit to the Office of National Assessments

1.96 On 10 May 2010 the Committee visited ONA in Canberra.

Private briefings

- 1.97 On 13 May 2010 the Committee were briefed on the various aspects of the AFP's involvement and cooperation with the Australian Intelligence Community and ASIO/ AFP Protocols, by:
- AFP Commissioner, Mr Tony Negus APM
 - AFP Deputy Commissioner, Mr Peter Drennan APM
 - Deputy Director-General ASIO
- 1.98 On 18 March 2010 the Committee were briefed on the Counter-Terrorism Whitepaper by:
- Mr Duncan Lewis – National Security Adviser
 - Bill Paterson – Ambassador for Counter-Terrorism
 - Garry Fleming – Homeland and Border Security Division – Department of Prime Minister and Cabinet
- 1.99 On 25 February 2010 the Committee were briefed on the *Anti-People Smuggling and Other Measures Bill 2010* by officials from Attorney-General's Department, ASIO, DSD, Defence Minister's Office and Prime Minister & Cabinet.
- 1.100 On 16 November 2009 the Committee were given a security briefing by the Department of Parliamentary Services. The Committee were briefed by:
- Mr Alan Thompson – Secretary, DPS
 - Mr David Elder – Serjeant-at-Arms
 - Mr Brian Hallett – Usher of the Black Rod
- 1.101 On 20 August 2009 Mr Geoff McDonald – First Assistant Secretary, National Security Law and Policy Division briefed the Committee on the *National Security Legislation Discussion Paper on Proposed Amendments*.

Issues arising during the year

- 1.102 No issues of particular concern arose during 2009/10.

Support for the Committee

- 1.103 To fulfil its statutory and other obligations the Committee is reliant on secretariat staff. In the reporting period the Committee was supported by four full time parliamentary officers. This consisted of a secretary, an inquiry secretary, a senior research officer and an office manager.
- 1.104 All staff are required under the *Intelligence Services Act 2001* (Schedule 1 Part 3 section 21) to be cleared to the 'level of staff members of ASIS' or a top secret positive security clearance (TSPV). Three staff were cleared to this level. These staffing and clearance levels were sufficient for the work of the Committee.

The Hon Anthony Byrne, MP

Chairman

