

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 Due to the Federal Election held in 2010 the Committee was not constituted until late 2010. The Committee first met on 25 November 2010 and since that meeting has met for a further 6 times on the following occasions:

- Meeting 2 – 10 February 2011;
- Meeting 3 – 3 March 2011;
- Meeting 4 – 24 March 2011;
- Meeting 5 – 25 March 2011 (private hearing);
- Meeting 6 – 16 June 2011 (public hearing); and
- Meeting 7 – 23 June 2011.

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, four of whom must be Senators and five of whom must be members of the House of

Representatives. A majority of the Committee's members must be government members.

- 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.

Change to size of the Committee

- 1.5 Schedule 8 of the *Telecommunications Interception and Intelligence Services Legislation Amendment Act 2011* amended Subsection 28(2) of the *Intelligence Services Act 2001* so that the Committee is to consist of 11 members, 5 of whom must be Senators and 6 of whom must be members of the House of Representatives. In addition, the quorum for the Committee was changed from 5 to 6 members.
- 1.6 Senator Mark Bishop was appointed to the Committee on 23 June 2011.
- 1.7 At the time of writing no other additional members had been appointed to the Committee.

Functions

- 1.8 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*; and
 - Division 3 of Part III of the *Australian Security Intelligence Organisation Act 1979*.
- 1.9 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.

- 1.10 No reports reviewing regulations which specify organisations as terrorist organisations were tabled during the reporting period.

Procedures and powers

- 1.11 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.
- 1.12 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.
- 1.13 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

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.

- Conducting inquiries into individual complaints in relation to the activities of the agencies.³
- 1.14 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
- 1.15 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.
- 1.16 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
- 1.17 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

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

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

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

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

subclause 7(1) of Schedule 1. A report may not be tabled until this advice is received.⁷

- 1.18 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.
- 1.19 In addition to the security requirements for staff all new members of the Committee in 2010-11 were informed of the main legislation governing information regarding the AIC.
- 1.20 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 2010-2011

- 1.21 Since the last annual report on the Committee's activities, tabled in June 2011, the Committee has not tabled any further reports.
- 1.22 The following reports are expected to be tabled in late 2011:
- Administration and Expenditure Review No. 9 2009-2010
 - ⇒ On 25 March 2011 the Committee held a private hearing at which ASIO, ASIS, DSD, DIGO, ONA and DIO appeared before the Committee; and
 - ⇒ On 16 June 2011 the Committee held a public hearing — its first since July 2006⁸ — and heard from representatives of the Refugee Council of Australia, RISE (Refugees, Survivors and Ex-Detainees), the Asylum Seeker Resource Centre and ASIO in relation to visa security assessments.

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

⁸ Public hearings was held on 31 July 2006 and 1 August 2006 for the Committee's *Review of Security and Counter Terrorism Legislation*.

- 1.23 The Committee's report *Review of the Listing of Al-Qa'ida in the Arabian Peninsula (AQAP) and the re-listing of 6 Terrorist Organisations* was tabled on 22 August 2011 and will be reported on in the Committee's Annual Report of Committee Activities for 2011-2012.

Administration and Expenditure Reviews

- 1.24 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.
- 1.25 During the reporting period the Committee did not table any administration and expenditure reports. The Committee is currently working on its report for its Review of Administration and Expenditure No. 9, 2009-2010.

Visit to ASIO, ASIS and ONA

- 1.26 On 17 June 2011 the Committee visited ASIO, ASIS and ONA. The Committee received highly classified briefings on aspects of these agencies performance.

Private briefings

Inspector General of Intelligence and Security (IGIS)

- 1.27 On Thursday 24 March, the Inspector General of Intelligence and Security, Dr Vivienne Thom, briefed the Committee on the role of the IGIS and on the IGIS' submission to the Committee's Administration and Expenditure Review No. 9.

Independent Review of the Intelligence Community

- 1.28 On 23 June 2011 members of the Committee met with Mr Robert Cornall AO in relation to the 2011 *Independent Review of the Intelligence Community*.
- 1.29 The Independent Review of the Intelligence Community (IRIC) in 2011 will review the Australian Intelligence Community (AIC) in accordance with a recommendation of the Inquiry into Australian Intelligence

Agencies (the Flood Inquiry) in 2004. The primary focus of this review will be the work of the six AIC agencies – Australian Security Intelligence Organisation (ASIO), the Australian Secret Intelligence Service (ASIS), the Defence Imagery and Geospatial Organisation (DIGO), the Defence Intelligence Organisation (DIO), the Defence Signals Directorate (DSD) and the Office of National Assessments (ONA).

1.30 The aim of the review is to address six key issues:

- how well the intelligence community is positioned to support Australia's national interests, now and into the future;
- development of the intelligence community over the last decade, including implementation of intelligence-related reforms;
- working arrangements and relationships between the intelligence agencies and policy and operational areas of government;
- working arrangements and relationships between the intelligence agencies and their international partners;
- arrangements and practices within the intelligence community for collaborative work, including legislative arrangements; and
- level of resourcing dedicated to the intelligence community and apportionment of resources across the community, noting that any future proposals would need to be offset consistent with the Government's overall fiscal strategy.

1.31 The review will prepare findings and recommendations on the above issues and seek to provide a classified report to the Government around mid-year for its consideration in due course, as well as an accompanying unclassified version of that report.

Issues arising during the year

1.32 No issues of particular concern arose during 2010/11.

Support for the Committee

1.33 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.

- 1.34 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). Two staff, the inquiry secretary and the senior research officer, were cleared to this level. These staffing and clearance levels were sufficient for the work of the Committee.

The Hon Anthony Byrne, MP

Chairman