
The Parliament of the Commonwealth of Australia

Annual Report of Committee Activities 2007-2008

Parliamentary Joint Committee on Intelligence and Security

October 2008
Canberra

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Membership of the Committee

41st Parliament

Chair The Hon David Jull MP

Deputy Chair Mr Anthony Byrne MP

Members Mr Stewart McArthur MP
 The Hon Duncan Kerr SC MP
 Mr Steven Ciobo MP

Senator the Hon Robert Ray
Senator the Hon John Faulkner
Senator Fiona Nash
Senator the Hon Alan Ferguson
(until 14 August 2007)
Senator the Hon Sandy Macdonald
(from 17 August 2007)

42nd Parliament

Chair The Hon Arch Bevis MP

Deputy Chair The Hon Philip Ruddock MP

Members Mr Daryl Melham MP
 Mr Mark Dreyfus QC MP
 The Hon Alexander Downer MP
(until 14 July 2008)

Senator Fiona Nash
Senator Gavin Marshall
Senator Julian McGauran
Senator the Hon Robert Ray
(until 5 May 2008)
Senator Michael Forshaw
(from 15 May 2008)

Committee Secretariat

41st Parliament

Secretary	Mr Stephen Boyd
Inquiry Secretary	Ms Jane Hearn
Senior Research Officer	Dr Cathryn Ollif
Administrative Officer	Mrs Donna Quintus-Bosz

42nd Parliament

Secretary	Dr Margot Kerley
Inquiry Secretary	Mr Robert Little
Research Officer	Ms Philippa Davies
Office Manager	Mrs Donna Quintus-Bosz



Terms of reference

This report is made under Part 4 Section 31 of the *Intelligence Services Act 2001*:

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



List of recommendations

1 The Parliamentary Joint Committee on Intelligence and Security

Recommendation 1

The Committee recommends to the Presiding officers the need for additional staff to have security clearances.

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 on 24 November 2007 this report covers Committee activities for the 41st and 42nd Parliaments.

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 of the Committee remained unchanged. However the membership of the Committee of the 42nd Parliament changed due to the resignation of Senator Robert Ray from Parliament on 5 May 2008. Senator Robert Ray was replaced by Senator Michael Forshaw on 15 May 2008.

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 During the period covered in the report, the Committee's activities were interrupted as a result of the Federal Election on 24 November. As a consequence between 1 July 2007 and 30 June 2008 the Committee met five times in 2007 and eight times in 2008 and the

Review of the re-listing of the Kurdistan Workers' Party (PKK) lapsed at prorogation on 15 October 2007.

- 1.9 The Committee completed one review of Administration and Expenditure and one major review of the proscription power given to the Executive under the Criminal Code. As was the case last year, 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. Three reviews of the listing of organisations as terrorist organisations, covering five organisations, were completed in the past year.

Procedures and powers

- 1.10 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 The Committee reiterates, as it has done in previous reports that, due to this limitation, balancing national security and parliamentary scrutiny remains a constant challenge for the Committee.²
- 1.11 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.
- 1.12 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;

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.

- 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

1.13 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

1.14 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.

1.15 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

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.

⇒ the performance by an agency of its functions.⁶

- 1.16 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
- 1.17 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.
- 1.18 In addition to the security requirements for staff all new members of the Committee in the 42nd Parliament were informed of the main legislation governing information regarding the AIC.
- 1.19 This information to members specified 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 2007-2008

- 1.20 Since the last annual report on the Committee's activities, tabled in June 2007, the Committee has tabled six reports. In addition to the tabled reports, the Committee is currently conducting the sixth review of administration and expenditure and a Review of the re-listing of Al-Qa'ida, Jemaah Islamiyah and Al-Qa'ida in the Lands of the Islamic Maghreb (AQIM).

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

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

41st Parliament

Review of Administration and Expenditure No. 5 Australian Intelligence Organisations

- 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 This was the first full review which looked broadly at the administration and expenditure of the six intelligence and security agencies since the IS Act was amended in December 2005 to add DIGO, ONA and DIO to the Committee's oversight responsibilities. As with all such reviews by the Committee, it was conducted in private. It was not publicly advertised and submissions were sought only from each of the six intelligence and security agencies and from the Australian National Audit Office.
- 1.23 All six agencies were represented by their respective Agency Head and other relevant staff at a number of private hearings held on Friday, 23 March 2007, Monday, 2 April 2007 and Tuesday, 3 April 2007. The final report was tabled in Parliament on 13 August 2007.
- 1.24 Overall, the Committee was satisfied the administration of the six intelligence and security agencies was sound. As an issue of past significance in previous years, the Committee found that, whilst the security clearance process had been streamlined and some backlog had been cleared, completing clearances within a reasonable timeframe was still an issue for most agencies. The recruitment of the required numbers of staff with necessary language skills also continues to remain an issue for most agencies. Overall, the Committee indicated that agencies were doing all they could to overcome this problem.
- 1.25 When reviewing the agencies' expenditure the Committee found nothing in the evidence put forward to give it concern about the existing financial management within any of the agencies. Agencies were open about the challenge of handling substantially increased budgets in conjunction with, in most cases, rapidly increasing staff numbers.
- 1.26 Whilst the Committee made no recommendations regarding the expenditure of the intelligence and security agencies, it noted that

several of the agencies, who have had large budget increases over the last few years, will not seek further funding in the near future. This is to ostensibly allow current growth to settle and to avoid the implementation of serious risk management issues. Other agencies predicted needing larger budgets in the years to come to cope with the consequences of growth and increased expectation of Government and/or clients.

Inquiry into the proscription of 'terrorist organisations' under the Criminal Code

- 1.27 The other major review of 2007 was the statutory review of the proscription of 'terrorist organisations' under Subsection 102.1A(2) of the Criminal Code. This inquiry was conducted as a result of legislative action taken in 2002 where by the Commonwealth Parliament passed a package of legislation to strengthen Australia's security and counter terrorism laws. A key element of this package is the executive power to proscribe an entity as a 'terrorist organisation' under the Criminal Code.
- 1.28 Under this subsection the Committee was required to review the operation, effectiveness and implications of the proscription regime and report to each House of Parliament and to the Minister as soon as possible after March 2007. The Committee's review also followed and took account of the recommendations and findings from the report of the Security Legislation Review Committee (the Sheller Committee). This requirement is also stipulated as a function of the Committee under section 29 (1) (ba) of the IS Act.
- 1.29 The inquiry was advertised generally on 18 November 2006 and published on the Parliament House website on the same date. In November and December 2006 the Committee wrote to relevant Ministers, the Premiers of each of the States and Territories and a wide range of non-government organisations, academics and individuals with an interest in the subject matter.
- 1.30 Twenty-nine written submissions were received and all were published on the Committee's website. The Committee also took evidence in public from twenty witnesses during one and a half days of hearings held on 3 and 4 April conducted in Parliament House, Canberra.
- 1.31 In his tabling statement the Chairman drew attention to important issues that arose during the review and were of concern to the members:

. . . it was evident throughout the inquiry that some sectors of the community continue to have concerns about the impact of proscription and, in particular, the breadth of terrorist organisation offences. Several witnesses called for reform that would see proscription transferred to the judiciary or a new advisory panel to advise the Minister on possible listings.

The Committee considers that the current model of executive regulation and parliamentary oversight provides a transparent and accountable system that is consistent with international practice. However, there is clearly room to improve the public information available about the implications of listing and data on the application of the new terrorism laws. The appointment of an Independent Reviewer would make a significant contribution to those efforts.⁸

1.32 The Committee made seven recommendations.

1.33 In recommendation one, under the heading 'The implications and community impacts of proscription' the Committee recommended that:

the Attorney-General's Department develop a communication strategy that is responsive to the specific information needs of ethnic and religious communities.

There be direct consultation on the management of visa security assessments between the Australian Security Intelligence Organisation, the Inspector General of Intelligence and Security and the UN High Commission for Refugees.⁹

1.34 In recommendation seven the Committee reiterated the need for an Independent Reviewer to monitor the application of terrorism laws on an ongoing basis, reporting annually to Parliament. In conjunction with this the Committee then recommended:

8 Hon David Jull, MP, *Tabling Statement, Inquiry into the proscription power of 'terrorist organisations' under the Australian Criminal Code*, House of Representatives, 20 September 2007.

9 *Inquiry into the proscription of 'terrorist organisations' under the Australian Criminal Code*, September 2007, p. xiii.

. . . that the Attorney-General's Department be responsible for the publication of comprehensive data on the application of terrorism laws.¹⁰

1.35 The general message conveyed by both these recommendations and by subsequent reports is that given the severity of the penalties associated with the proscription laws and their potential implications for ethnic communities, refugees and asylum seekers there needs to be an adequate community communication or education programme to accompany a listing or a re-listing.

1.36 The Committee also felt that procedures surrounding proscription needed to be further refined, particularly in relation to the non-statutory criteria that have been developed by ASIO to be taken into account when developing advice for the Minister. Recommendation two stated:

That the criteria 'ideology and links to other networks and groups' be restated so that:

- the link between acts of terrorist violence and the political, ideological or religious goals it seeks to advance is clearly expressed;
- links to other networks and groups that share the same world view is identified as a separate criteria.¹¹

1.37 The Government has not responded to this report. This is of concern to the Committee.

Criminal Code Act 1995 – The proscription of terrorist organisations

1.38 Three reports on the listing of organisations as terrorist organisations were tabled in the period under review. The three reports dealt with five organisations, all re-listings.

1.39 Procedural issues relating to the way information on listing or re-listing is provided to the states and territories by the Attorney-General's Department continued. The Attorney-General's Department practice of sending the letters seeking comment on the listings to the Attorneys-General in the states and territories rather than the Chief Ministers or Premiers, as agreed under 3.4(6) of the *Inter-Governmental Agreement on Counter-Terrorism Laws*, has raised concerns that the

10 *Inquiry into the proscription of 'terrorist organisations' under the Australian Criminal Code*, September 2007, p. xv.

11 *Inquiry into the proscription of 'terrorist organisations' under the Australian Criminal Code*, September 2007, p. xiii.

consultative process surrounding listings is diminished. Concerns were also raised with the Secretariat that the time frame of 12 days, between writing to the states and territories and listing, is too short to allow effective consultation and consideration.

- 1.40 Procedural issues also arose in relation to ensuring that the information in the statement of reasons conveys to the Committee all the important details on an organisation up for re-listing. The provision of detailed information in the statement of reasons has a direct effect on the listing implications for the Australian public.
- 1.41 In the *Review of the re-listing of Hizballah's External Security Organisation (ESO)*, July 2007, procedural issues arose due to the fact that Hizballah holds fourteen seats in the Lebanese Parliament and that its military wing, the Islamic Resistance (IR), was engaged in a 34-day conflict with Israel in 2006, in which it was reported that Australians, of dual nationality, may have been fighting alongside Hizballah fighters and Israeli fighters in Lebanon.¹² It was therefore important that an accurate distinction be made between the terrorist activities of the ESO and the para-military activities of the IR and Hizballah. It was noted by the Committee that the statement of reasons did not make this distinction clear.
- 1.42 As terrorist organisations evolve with changing membership, structure, affiliation, funding, aims and structure it is important that the statement of reasons accurately conveys this detail. It is the Committee's view that foregoing this standard would be of detriment to the effectiveness of the proscription regime.
- 1.43 On 1 July 2008, the Government formally responded to the *Review of the re-listing of Hizballah's External Security Organisation (ESO)*, July 2007 and the *Review of the re-listing of three terrorist organisations*, September 2007, by simply stating in both cases that:

The Government agrees with the recommendation.¹³

Review of the re-listing of Hizballah's External Security Organisation (ESO)

- 1.44 Hizballah's External Security Organisation (ESO) is also known as Islamic Jihad Organisation and Hizballah International. It was originally listed in 2003 under legislative arrangements which required that organisations to be listed had to also be on the United
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12 Banham, C. 'Don't take up arms with the enemy', Sydney Morning Herald, 29 July 2006.

13 Parliamentary Joint Committee on Intelligence and Security, Government's Response to Committee's Recommendations, received 1 July 2008.

Nations list of terrorist organisations. In 2005 these arrangements were amended to remove this requirement and the ESO came up for review under new legislative arrangements, which were passed by the Parliament in 2004. At this time, the Committee reviewed the re-listing of the ESO and reported to Parliament in September 2005. This review was of the second re-listing.

- 1.45 On 7 May 2007 the Attorney General advised the Chair that he intended to re-list the ESO as a terrorist organisation. The Governor General made the regulation on 23 May 2007 and it was tabled in the House of Representatives on 29 May 2007 and in the Senate on 12 June 2007. The disallowance period of 15 sitting days for the Committee's review began from the date of the first tabling. The Committee was required to report to the Parliament by 15 August 2007.
- 1.46 The Committee advertised the inquiry in *The Australian* on 5 June 2007. Notice of the inquiry was also placed on the Committee's website. Two submissions were received from the public.
- 1.47 The Committee wrote to all Premiers and Chief Ministers inviting submissions. One response was received from the Chief Minister of the Northern Territory advising that it did not wish to make a submission.
- 1.48 Representatives from the Attorney-General's Department, ASIO and the Department of Foreign Affairs (DFAT) attended a private hearing on the listings on 18 June 2007 in Canberra.
- 1.49 The Committee sought information to justify the re-listing with emphasis on the activities of the organisation in the period since the last re-listing.
- 1.50 The Committee concluded that the ESO is still a dangerous organisation that continues to prepare and plan for terrorist acts from within Hizballah's structure. The Committee also noted that Hizballah has developed into a legitimate Lebanese political party and runs a number of social welfare institutions. It also noted Hizballah's success in Lebanon's 2005 elections, where it won fourteen seats and its adoption of a more passive ideology, less influenced by Islamic extremism. Whilst the report noted these developments, it also noted that the ESO retains its capacity to engage in international terrorism.

...the ESO has global reach which has been detected in countries around the world. The ESO has mounted

international terrorist attacks and there is no reason to believe the organisation has relinquished this worldwide capacity.¹⁴

...the ESO continues to prepare and plan for terrorist acts. It is the ESO that is responsible for planning and coordinating Hizballah's international terrorist related activities.the absence of terrorist operations against Western interests during the past decade reflects a calculated policy decision rather than a lack of capability.¹⁵

- 1.51 In making the recommendation that the regulation not be disallowed the Committee noted that the statement of reasons used to assess ESO's re-listing did not take into account any engagement in peace or mediation processes. Given the political complexities that arise from the long running conflicts in this region of the world the Committee felt the statement of reasons should account for these peace and mediation processes.

Review of the re-listing of three terrorist organisations

- 1.52 Hamas' Izz al-Din al-Qassam Brigades (Hamas Brigades) and Lashkar-e-Tayibba (LeT) were originally listed as terrorist organisations under the Criminal Code in 2003. The Palestinian Islamic Jihad (PIJ) was originally listed as a terrorist organisation in 2004. They were re-listed in 2005. The Attorney-General advised the Committee of the proposed re-listing of the three organisations on 31 August 2007. This was prior to the lapsing of their current re-listing as provided for in section 102.1(3) of the Criminal Code. The Governor-General signed the regulations on 6 September 2007 and they were tabled in the House of Representatives on 11 September 2007 and in the Senate on 12 September 2007. The Committee was required to report to the Parliament by 12 November 2007, it reported by 20 September 2007.
- 1.53 At a private meeting on 13 September the Committee resolved to review the listing on the papers rather than by way of hearings. Notice of the review was immediately placed in the Committee's website.

14 Parliamentary Joint Committee on Intelligence and Security, *Review of the Relisting of Hizballah's ESO*, p. 8.

15 Parliamentary Joint Committee on Intelligence and Security, *Review of the Relisting of Hizballah's ESO*, p. 11.

- 1.54 After considering the evidence given in ASIO's statement of reasons in support of the re-listing of the three organisations, the Committee was satisfied that they met the definition of terrorist organisations. Credible and corroborated evidence was provided to prove that all three are directly or indirectly engaged in preparing, planning, assisting in or fostering the doing of terrorist acts (whether or not a terrorist act has occurred or will occur).
- 1.55 The Committee did not recommend the disallowance of the regulations proscribing the three organisations.

42nd Parliament

Review of the re-listing of the Kurdistan Workers' Party (PKK)

- 1.56 The PKK was first listed as a terrorist organisation in 2006. On 18 September 2007 the Attorney-General wrote the Committee chair advising that the re-listing of the PKK as a terrorist organisation was to be made under section 102.1 of the Criminal Code. The Federal Election interrupted the review being conducted by the Committee in the 41st Parliament.
- 1.57 Following the election the regulation was tabled in the House of Representatives and the Senate on 12 February 2008. The Committee was therefore required to report to Parliament by 20 March 2008. The Committee in the 42nd Parliament first met on 13 March 2008 and therefore it was not possible to meet this deadline.
- 1.58 Notice of the inquiry was placed on the Committee's website and three submissions were received from the general public. Representatives of the Attorney-General's Department (AGD), ASIO and the Department of Foreign Affairs (DFAT) attended a private hearing on the listing in Canberra on 20 March 2008.
- 1.59 In this report the Committee highlighted a recommendation made in a previous report, *Review of the listing of the Kurdistan Worker's Party (PKK)*, April 2006, which recommended that:
- a comprehensive information program, that takes account of relevant community groups, be conducted in relation to any listing of an organisation as a terrorist organisation.¹⁶
- 1.60 This issue in particular was raised as a result of subsequent and numerous requests by the Committee for a community information

16 *Review of the listing of the Kurdistan Worker's Party (PKK)*, April 2006, p. 7.

program to accompany any listing. Although the Attorney-General's Department have assured the Committee they are working on this program it has yet to be implemented, this is of concern. This issue will be explored further in later paragraphs.

- 1.61 Overall, the Committee found that the PKK continues to engage in activities that satisfy section 102.1 of the Criminal Code. The Committee did not recommend disallowance of the regulation.

Current reviews

- 1.62 The Committee is currently working on the sixth review of administration and expenditure.

Inspections and briefings

Visits to facilities

- 1.63 In July 2007, the Committee visited the Australian Nuclear Science and Technology Organisation.
- 1.64 On 22 April 2008 the Committee visited ASIO and ASIS in Canberra. On 23 April 2008 the Committee visited DSD, DIO and DIGO. The Committee received briefings on the roles, policies and procedures for each of the agencies. The briefings played a valuable role in informing the incoming Committee members about the Australian Intelligence Community.

Private briefings

- 1.65 In August 2007 the Committee met with a UK Parliamentary Delegation.

Issues arising during the year

- 1.66 The Committee was sufficiently resourced in both financial and personnel terms to conduct its work.

Private briefings: ONA

- 1.67 In April 2007, Mr Peter Varghese, Director-General ONA, declined a request from the Committee to give a private, background briefing to the Committee in the context of a terrorist listing review. Mr Varghese advised the Committee of his view that section 29 (3) (h) prevented him from doing so as it would be 'dipping into' ONA assessments and sources.
- 1.68 In its previous Annual Report the Committee expressed its disappointment with this interpretation of the Act particularly since other agencies had been so forthcoming with briefing the Committee in regard to terrorist listings. In June 2007 the Committee sought legal advice from Mr Bret Walker SC in relation to the breadth of paragraph 29 (3) (h) and the intersection of the provision with the review function of the Committee.
- 1.69 On 5 October 2007 Mr Walker submitted his opinion to the Committee. It stated, in conclusion:
- that although the Committee has undoubted power to require the Director General of ONA to attend to give evidence (in a general sense) in a hearing under sec 102.1 of the *Criminal Code*, this may not be a useful exercise given that para 29(3)(h) of the IS Act wholly prevents the Committee from compelling any officer of ONA to provide evidence to the Committee by way of the Committee reviewing the reports or assessments of ONA concerning the listing of a terrorist organisation.¹⁷
- 1.70 This aspect of the IS Act as it affects the operations of the Committee is a potential matter for review.

Attorney General's Department – Community Consultation on listing of terrorist organisations

- 1.71 During the past year the Attorney-General's lack of a comprehensive community information program in relation to any listing of an organisation as a terrorist organisation became an issue. In March 2005 the Committee made the following recommendation:

¹⁷ Bret Walker SC, Opinion, Parliamentary Joint Committee on Intelligence and Security: Powers to obtain evidence from the Office of National Assessment.

Recommendation 1:

The Committee recommends that a comprehensive information program, that takes account of relevant community groups, be conducted in relation to any listing of an organisation as a terrorist organisation.¹⁸

- 1.72 Since this date the Committee has made numerous requests to the Attorney-General's Department for information to be provided to the Community in relation to the listing of organisations. This information is particularly important given the severe penalties that accompany the proscription of an organisation as a terrorist organisation.
- 1.73 On 17 August 2007 the Committee received a response from the Attorney General's Department stating that it was "not practicable to undertake broader community consultations in advance of the listing of terrorist organisations."¹⁹ However the Committee also has an interest in the level of information to be provided to affected communities following the listing of organisations.
- 1.74 The intent to provide widespread community information in relation to the listing of a terrorist organisation is clearly evident in a second reading speech by then Attorney-General Mr Daryl Williams on 29 May 2003. He stated that 'any such announcement will be widely publicised in both print and electronic media.'²⁰
- 1.75 The Committee's interest in this issue is demonstrated in its report, *Review of the re-listing of Al-Qa'ida and Jemaah Islamiyah as terrorist organisations* (October 2006) where it reiterated the previous recommendations on the need for such information programs in reports from March, May, August and September 2005. In all of these reports the Attorney-General's assured the Committee these programs were being developed.
- 1.76 In June 2007, in its report, *Review of the re-listing of Ansar al-Sunna, JeM, Lej, EIJ, IAA, AAA and IMU as terrorist organisations*, (June 2007) the Committee noted that:

18 *Review of the listing of six terrorist organisations*, March 2005, p. ix.

19 Parliamentary Joint Committee on ASIO, ASIS and DSD, Government Response to Committee's Recommendations, Attorney-Generals Department, dated 17 August 2007.

20 *Review of the listing of the Kurdistan Workers' Party (PKK)*, April 2007, p. 7.

. . . the level of communication with the public has been diminished by the removal of the statement of reasons from the Attorney-General's media release and website.²¹

1.77 Finally, in the 42nd Parliament, in its report, *Review of the re-listing of the Kurdistan Workers Party (PKK)*, (June 2008), the Committee was advised by the Attorney-General's Department that they:

have been working on some new material which will be in various languages.

[they also advised] would be monitoring the effectiveness of these pamphlets and undertook to engage in consultations with community leaders.²²

1.78 The Committee has indicated its disappointment with the delayed nature of this community education program, as it believes it to be a crucial component of any listing. The Committee has sought a briefing from the Attorney-General's Department about what action they have taken in relation to informing the public and relevant interest groups, particularly those from a non-English speaking background, regarding the listing of terrorist organisations.

1.79 Since 30 June 2008 the Attorney-General's Department have reported to the Committee on recent developments in improving community education and awareness. The Committee will continue its discussions with the Attorney-General's Department about these matters.

Resignation of Senator Robert Ray

1.80 On 5 May Senator Ray resigned from Parliament and therefore from the Joint Committee on Intelligence and Security.

1.81 The Committee recorded its thanks by highlighting Senator Ray's substantial contribution to the work of the Committee, which has left it with an excellent reputation within Australia's intelligence and security agencies.

21 *Review of the re-listing of Ansar al-Sunna, JeM, Lej, EIJ, IAA, AAA and IMU as terrorist organisations*, June 2007, p. 6.

22 *Review of the re-listing of the Kurdistan Workers Party (PKK)*, June 2008, p. 5.

Casual vacancies

- 1.82 Following the resignation of Senator Ray, the Committee considered any impact a casual vacancy may have. The secretariat consulted House of Representatives Practice and Odger's Australian Senate Practice, where no reference to the issue of casual vacancies was found. The secretariat then discussed this issue with the Joint Committee on Public Works and Audit (JCPAA), the House of Representatives Chamber Research Office and the Senate Procedure Office.
- 1.83 Informal advice received was, that as the legislation is silent on the matter, this is a matter of procedure and practice. The universal view has been that a member resigning does not invalidate the Committee it merely creates a vacancy.
- 1.84 On 29 July 2008, the Committee received formal advice from the Clerk of the House, Mr Ian Harris AO stating that:

The long standing practice of the Parliament has been that, once properly constituted at the commencement of a Parliament, committees, including statutory committees, may continue to operate notwithstanding any vacancies which may occur in their memberships from time to time. In the absence of specific provisions relating to this matter it seems reasonable to conclude that this practice should also apply in the case of the PJCIS.²³

Support for the Committee

41st Parliament

- 1.85 To fulfil its statutory and other obligations the Committee is reliant on secretariat staff. In the reporting period of the 41st Parliament, the Committee was supported by four full time parliamentary officers. This consisted of a secretary, two different inquiry secretaries/research staff and an office manager. All staff are required under the IS Act 2007 (Schedule 1 Part 3 section 21) to be cleared to the 'level of staff members of ASIS'. All staff were cleared to this level allowing for the effective functioning of the Committee secretariat. These staffing levels were sufficient for the work of the Committee.

23 Secretariat correspondence, Vacancy in Membership of Committee—Effect on meetings, Office of the Clerk of the House, 29 July 2008.

42nd Parliament

1.86 In the reporting period of the 42nd Parliament, the Committee was supported by four full time parliamentary officers. This consisted of a secretary, an inquiry secretary, a research officer and an office manager. All staff are required under the IS Act 2007 (Schedule 1 Part 3 section 21) to be cleared to the 'level of staff members of ASIS'. During the period of this report only the Office Manager was cleared to the appropriate level required by the legislation. The inquiry secretary and research officer were cleared in August 2008. The Committee is concerned that there is an insufficient pool of staff with necessary security clearances within the Department of the House of Representatives. The Committee recommends to the Presiding officers the need for additional staff to have security clearances. This is needed to address staff movements and provide flexibility.

Recommendation 1

The Committee recommends to the Presiding officers the need for additional staff to have security clearances.

The Hon Arch Bevis MP

Chairman



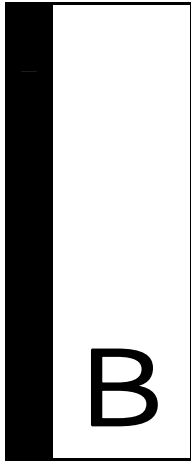
Appendix A – Committee meetings and hearings for the year ending 30 June 2008

41st Parliament

Type	Location	Date
ANSTO – Inspection of facility and briefing	Lucas Heights	25 July 2007
Private meeting	Canberra	9 August 2007
Private meeting and meeting with a delegation from the United Kingdom	Canberra	16 August 2007
Private meeting	Canberra	13 September 2007
Private meeting and briefing with ASIS	Canberra	20 September 2007
Total		5

42nd Parliament

Type	Location	Date
Private meeting	Canberra	13 March 2008
Private meeting and private hearing	Canberra	20 March 2008
Inspection and private briefings at ASIO, ONA and ASIS	Agency Offices, Canberra	22 April 2008
Inspection and private briefings at DSD, DIGO and DIO	Agency Offices, Canberra	23 April 2008
Private meeting	Canberra	15 May 2008
Private meeting	Canberra	29 May 2008
Private meeting	Canberra	19 June 2008
Private meeting	Canberra	26 June 2008
Total		8



Appendix B – Committee reports and inquiries

Reports tabled:

- Review of Administration and Expenditure: Australian Intelligence Organisations – No. 5
- Annual Report of Committee Activities 2006-2007
- Review of the re-listing of Hizballah's External Security Organisation (ESO) as a terrorist organisation under the *Criminal Code Act 1995*
- Inquiry into the Terrorist Organisation Listing Provisions of the *Criminal Code Act 1995*
- Review of the re-listing of the Palestinian Islamic Jihad (PIJ), Lashkar-e-Tayibba (LeT) and the Hamas' Izz al-Din al-Qassam Brigades as terrorist organisations under the *Criminal Code Act 1995*
- Review of the re-listing of the Kurdistan Workers Party (PKK) as a terrorist organisation under the *Criminal Code Act 1995*.

Current Inquiries:

- Review of Administration and Expenditure No. 6 – Australian Intelligence Agencies
- Review of the re-listing of Al-Qa’ida (AQ), Jemaah Islamiyah (JI) and Al-Qa’ida in the Lands of the Islamic Maghreb (AQIM) as terrorist organisations under the *Criminal Code Act 1995*