



2008/579

File Ref: 2007/77

Mr Stephen Palethorpe
Secretary
Senate Finance and Public Administration Committee
Parliament House
CANBERRA ACT 2600

Dear Mr Palethorpe

I am responding to an e-mail that was sent to my office which attached some written questions on notice for the current estimates round, submitted by Senator Natasha Stott Despoja.

Please find attached the answers to those questions.

Yours sincerely



Ian Carnell
Inspector-General of
Intelligence and Security

1 July 2008

PM114a (Stott Despoja)

What is the status of the investigation by the Inspector-General into the activities of ASIO agents in relation to the Izhar Ul-Haque case?

The inquiry into this matter is well advanced. However, it is not possible at this point to predict when the report will be finalised.

PM114b (Stott Despoja)

How much has the investigation cost to date?

The direct costs of the inquiry incurred by the Office of the Inspector-General of Intelligence and Security up to 30 June 2008 are as follows:

Staff related costs:	\$76 983.31
Legal expenses:	\$85 499.53
Other expenses:	\$1 324.83
Total expenses (to date):	\$163 807.67

PM114c (Stott Despoja)

What is IGIS' budget for the investigation?

With the exception of legal costs associated with the inquiry, no specific budget was set within the office.

PM114d (Stott Despoja)

In response to my question on notice during additional estimates in February, the Inspector-General advised that he has 'raised with the Government the possibility of amendments to the IGIS Act which would provide that in special circumstances, formal inquiries under the Act into intelligence and security issues could cover other intelligence agencies'¹. What was the Government's response to that suggestion?

The Inspector-General has not received a response as such, but is aware that the proposal is being considered.

PM114e (Stott Despoja)

Total appropriations for IGIS in 2008-09 amount to \$1.9M, an increase of \$0.2M from 2007-08. IGIS has responsibility for the oversight of six agencies, including ASIO with an estimated income for 2008-09 of \$358.383M, an increase of \$62.080M

¹ PM79, Letter dated 27 March 2008 from IGIS to the Senate Finance and Public Administration Committee

from 2007-08² - in light of this: is IGIS adequately resourced to carry out its functions under the Act?; and will ASIO's increased resources put additional strain on IGIS?

The 2006 budget provided for an additional six positions, staggered over a four year period, for the Office of the Inspector-General of Intelligence and Security (OIGIS). This decision was driven largely by the anticipated increase in the volume of inspection work undertaken by OIGIS as ASIO's resources increased.

Whether this increase in OIGIS resources proves sufficient will depend on the volume of complaints and the level of formal inquiries which might arise in the future. It is not possible to forecast whether there will be increases and if so, of what magnitude.

PM114f (Stott Despoja)

IGIS has oversight responsibilities for six agencies - Australian Security Intelligence Organisation (ASIO), the Australian Secret Intelligence Service (ASIS), the Defence Signals Directorate (DSD), the Defence Intelligence Organisation (DIO), the Defence Imagery and Geospatial Organisation (DIGO) and the Office of National Assessments (ONA):

a. How many employees does IGIS have?

The Inspector-General currently has nine staff assisting him. It is envisaged that an additional two staff will be recruited in FY 2008-09.

b. Is it fair to say that the vast bulk of IGIS' expenditure relates to salaries?

Yes. Some 78 % of the FY 2008-09 appropriation for the Office of the Inspector-General of Intelligence and Security relates to salary expenditure.

c. Are individual employees assigned to oversight roles in respect of each agency?

Individual staff members are assigned primary responsibility for the office's monitoring of particular agencies. However, this is not done in a rigid way. The small size of the office necessitates that staff represent the office across a range of issues and agencies as required.

d. Are there sufficient employees to monitor each agency?

The current level of resourcing is sufficient at this time, although the planned additional staff in 2008-09 will be welcome. As noted earlier in response to question 114e, change in complaints and inquiry trends would require reconsideration of OIGIS resources.

² 2008-09 Budget paper No. 2

- e. **Will the \$200,000 allocated to IGIS in the 2007-08 Budget be expended on additional employees? If so, what roles are envisaged for those employees?**

The additional allocation in FY 07-08 provided for an additional two staff. As with the office's existing staff, additional staff undertake elements of the office's inspection program and assist the Inspector-General with inquiries as required.

- f. **How many complaints or inquiries is IGIS undertaking? Are any of those complaints or inquiries 'own motion' initiated?**

In FY 2007-08 the Inspector-General commenced 18 inquiries, of which three were initiated of the Inspector-General's 'own motion'. At the end of the financial year, four of the 18 inquiries were ongoing.

PM114g (Stott Despoja)

In an interview with the Sydney Morning Herald on 12 April 2008, the Inspector-General said;

"My belief is that a key test for liberal democracies in the area of counter-terrorism is a willingness to revisit what was introduced when there was a sense of urgency and, if necessary, modify the measures to ensure effectiveness, balance and proportionality"

In your view, will the Clarke Inquiry adequately review the counter-terror laws in place?

The terms of reference for Mr Clarke's inquiry do not appear to be so expansive as to encompass all the relevant legislation.

PM114h (Stott Despoja)

Is a broad-ranging and independent review of Australia's counter-terrorism laws required?

There are some issues which have already been the subject of careful and thorough consideration and action on the recommendations, rather than further review, is what the Inspector-General respectfully suggests is needed. In this regard reference should be made to the reviews done of the criminal offence provisions by the Security Legislation Review Committee (the Sheller Committee) and the Parliamentary Joint on Intelligence and Security; as well as the Australian Law Reform Commission review of the sedition offences.

It should also be noted that the questioning and questioning/detention warrant provisions in the *Australian Security Intelligence Organisation Act 1979* have been the subject of close scrutiny by OIGIS and have been reviewed by the Parliamentary Joint Committee. The Committee's review led to a number of changes to the relevant provisions, although there are two outstanding recommendations of that Committee which could usefully be revisited – the length of the sunset clause, and provision to the prescribed authority (a

retired Judge who oversees the questioning) of a copy of the statement of the grounds on which the warrant was issued.

Having said the above, the Inspector-General remains of the view expressed by all members of the Sheller Committee that review arrangements for the counter-terrorism laws are inadequate. The matters mentioned above do not cover all of the areas for which counter-terrorism legislation has been enacted. Also, it is important that the operation, effectiveness and implications of the body of legislation as a whole be examined. Apart from a COAG sponsored review of part of the legislation scheduled to commence in December 2010, no other review is scheduled.

One option is to have an independent reviewer akin to the role Lord Carlile plays in the UK. Another would be to have a further review by an expert committee of the full range of relevant legislation. These two options are not mutually exclusive.