



RESEARCH NOTE

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Commission of Inquiry into the Australian Secret Intelligence Service: Its Findings and Recommendations

Background

The Australian Secret Intelligence Service (ASIS) collects secret intelligence in foreign countries. The Director-General of ASIS is directly responsible to the Minister for Foreign Affairs, and is bound by a secret Directive which establishes the nature and limits of the Service's activities. Along with ASIO (which operates within Australia) and the Defence Signals Directorate (which collects signals intelligence) ASIS supplies intelligence to assessment agencies such as the Office of National Assessments, the Defence Intelligence Organisation, the Department of Foreign Affairs and other government departments. ASIS does not carry out covert actions designed to influence politics in foreign countries.

The Commission of Inquiry into ASIS was established last year following a series of critical media reports which culminated in a Four Corners program on 21 February 1994. Four Corners featured two former ASIS officers with grievances against the Service who claimed that ASIS was unaccountable and out of control.

A classified Report was submitted to the government on 31 March 1995. The Public Report summarises the Commissioners' findings and recommendations on the grievances of the former ASIS officers and on the overall accountability and management of ASIS.

Findings on the Officers' Complaints

The Commissioners concluded that there was no evidence to support allegations that ASIS was out of control. They said the Service's 'operational management is well structured ... and, in major instances, subject to external approval'.¹ The Commissioners also rejected the claim, much repeated in the media, that ASIS maintained 'tens of thousands of files' on Australian citizens.

The Commissioners criticised ASIS's handling of events which led the officers to have grievances against the Service. ASIS's investigation of one officer's complaint was found to be 'procedurally flawed', and a psychological report on the officer used in a 'highly inappropriate' manner. Two investigations into the second officer and his wife were based on inadequate information and the officer was justified in 'seeking the generous redundancy' proposed by a later Grievance Panel. They considered that the officer's wife should receive an apology for the 'deplorable' response by ASIS to the allegations made against her.(pp8-9)

Findings on ASIS

The Public Report conveyed a generally favourable impression of the accountability and management of ASIS. The Commissioners were satisfied that ASIS 'meticulously observed' procedures for approval of operations. ASIS's intelligence collection

priorities accorded with 'the directions of the Government' and 'are not self-selected', a point which the Commissioners considered was a 'powerful rejoinder to any arguments that ASIS is free to pursue such intelligence efforts as it pleases'.(p10)

The Commissioners concluded that ASIS is 'well managed and highly focussed on its core function'. This focus had, however, developed a culture of 'faithfulness and stoicism' which elevated conformity and regarded 'authority rather than consultation as the managerial norm'.(p14) Such a culture had an adverse affect on procedures for handling staff grievances and fostered a notion that dissent was 'equivalent to disloyalty'.(p15)

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¹ All references are to the Public Report of the Commission of Inquiry into ASIS, 31 March 1995.

Major Recommendations

- **Legislation** Legislative basis for ASIS rather than the existing executive authority. The Report said legislation would 'reassure the public' and 'dispel the persistent mythology that the Service is unaccountable'.(p11) The fact that this proposal, which would hardly affect ASIS's actual operation, has been a major focus of media attention suggests that the idea has in part already achieved its goal.
- **Parliamentary Committee** The proposal to bring ASIS under the scrutiny of a Parliamentary Committee has the potential for a more substantial impact of the management of ASIS. The proposed Committee would combine its functions with that of the Parliamentary Committee on ASIO and would have the power to initiate its own inquiries, except in 'operationally sensitive matters'.(p13)
- **Inspector General of Intelligence and Security** The Inspector-General, who oversees the activities of Australia's intelligence and security agencies, should carry out a retrospective audit of ASIS's compliance with procedures and with Australian law. The audit would be submitted to the Minister and to the Parliamentary Committee. The Inspector-General would no longer deal with ASIS staff grievances.
- **D Notices** Under the D Notice system, media outlets voluntarily agree not to publish certain sensitive information. The Report concluded that there is value in the system, but that it needs 'reinvigoration through a consultative process between government and media representatives'.(p17)
- **Crimes Act** Commonwealth employees are bound to confidentiality by the Crimes Act. The Gibbs Review of Commonwealth Criminal Law recommended that the Commonwealth should not have to prove that damage had been caused in cases where an officer or ex-officer of a security and intelligence organisation had disclosed information relating to such organisations, thus making it easier to secure a prosecution. The Commissioners generally supported the Gibbs proposals, but did not agree that proof of damage should be dispensed with, 'save where the likelihood of harm is overwhelming'.(p17)
- **ASIS Management Culture** The Commissioners urged ASIS senior management to accept that 'staff will disagree with management decisions from time to time' and that a complaint is not an 'act of treachery'. The Report called for 'greater transparency in promotion and other procedures' and 'a more participative style of management'.(p14-16)
- **The Public Face of ASIS** Aware that journalists are fascinated by secret agencies, but that the image of ASIS presented in the media is invariably unflattering, the Commissioners proposed a number of ways in which a compromise could be found between ASIS's need for security and the free flow of information in the public arena. These include:
 - legislation and parliamentary scrutiny;
 - more public information on ASIS, including on arrangements for control and accountability;
 - modification to the current policy of neither confirming nor denying stories about ASIS;
 - appointment of an ASIS media liaison officer;
 - a reinvigorated D Notice system.