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Parliamentary Joint Committee on Intelligence and Security
PO Box 6021
Parliament House
Canberra ACT 2600

Public Submission - Review of Administration and Expenditure No. 20 (2020–21) – Australian Intelligence Agencies

I would like to thank the Committee for the opportunity to make this submission to the Parliamentary Joint Committee on Intelligence and Security (the Committee)'s 2020–21 review of the administration and expenditure of Australian Intelligence Agencies.

For the avoidance of doubt, these remarks are my own and should not be taken to represent the official position of my employer, which I have not named so as to best preserve this perspective. For some context, I am a military veteran with operational service in Iraq and Afghanistan, and I have sufficient understanding of the Intelligence Agencies to make relevant commentary. Although the inquiry has called for submissions about financial year 2020-21, my remarks are intended to reflect a broader time period, but are entirely relevant to FY 2020-21.

This submission specifically relates to the Committee's interest in "*internal staff complaint investigation and resolution mechanisms, as well as agency instigated review for cause processes - triggers, procedures, and support for staff whilst ongoing*".

Living in the National Security 'shadow'

The Committee members would appreciate, familiar as they are with the secretive nature of the Australian Intelligence Agencies or Community (NIC/AIC as they are sometimes called), that perfectly ordinary laws, policies, process and procedures that work admirably in the wider public service are more complex when applied to staff who have additional obligations in the shadow of myriad national security obligations;

- to maintain the highest levels of security clearance,
- misrepresent where they work or the type of work they perform,
- restrictions on making claims about that work in follow-on employment,
- where they travel and who they meet,
- restrictions on building professional networks with those people, and
- how they interact with technology throughout their professional and personal lives.

These are not present in every agency or every role, but certainly there are those AIC members who are required to do these things to protect themselves from real and not insubstantial risks to themselves and their families, not just while employed, but for their whole lives. For clarity, here I am speaking of surveillance operatives¹, covert/ clandestine or undercover operators and those whose identities cannot be declared², those involved in covert technical operations³ or officers using legally authorised assumed identities⁴, and others.

¹ www.careers.asio.gov.au/public/b_fileupload.proc_download?in_file_id=6765389&in_servicecode=CUSTOMSEARCH&in_organid=12852&in_sessionid=0

² *Intelligence Services Act 2001* section 39(1)(b)(i), as but one example

³ jobs.afp.gov.au/job-opportunities/details/technical-operative-police-technical-team-9378

⁴ *Crimes Act 1914* Part IAC

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Often agencies adopt the principles of the broader public service without giving full consideration to the assumptions made by the framers, your learned predecessors who those laws for a typical public servant free of the particular obligations of an Intelligence operative. For example, where most APS staff can discuss the challenges and mental pressures of work with a partner, friends, a counsellor or crisis phone line – imagine how difficult this would be where the member in crisis is unable to describe who, what, when, where or why they were experiencing difficulty. Similarly, an officer returned from a job in difficult conditions, experiencing a medical complaint, cannot divulge to their GP the location they have visited, or the type of work they were performing, when doing so may allow the GP to diagnose a mysterious ailment caused by the location or particular duties.

In most cases, when agencies approach the implementation of HR policy in good faith, these challenges do not present a substantial obstacle to the proper functioning of the agencies. However, in some cases – we hope the minority – there are instances where staff members can find themselves confronting circumstances which any reasonable person would find oppressive. Laws written with operational objectives in mind, and work well for an officer undertaking their professional duties, confront special hurdles when an officer is unfortunate enough to suffer an acute personal or family crisis.

The mindset and cultural aspects of working for the agencies

Over several decades I have found that officers of the military, law enforcement and intelligence agencies tend to exhibit what I call a ‘duty mindset’. Members may let some minor irritations just slide because they feel obligated to the bigger mission and place the national interest, or agency esprit-de-corps above their own needs. Admirable as this trait may be, it is a double edged sword. Agencies can be lulled into a mindset that staff are content, happy even, with existing policies because few staff ever raise concerns. Unfortunately, those who do have often deferred action, accepting the difficulties of working within the framework while focussing on their duty, and only come forward when they hit a crisis point.

More insidious than the ‘duty mindset’ is another cultural issue prevalent within the intelligence community, a widespread fear of repercussions for speaking-up, such as detrimental career prospects within and across the tight-knit community.

An agency might believe that rare occurrences mean the policy is working for most staff and does not require change. However, it is at the limits, in periods of crisis, that good policy and decision makers can make a world of difference. One only needs to look at years of officer suicides within the national security precinct in parliamentary triangle to observe the tragic outcomes⁵. Even a hawk callous enough to look past the human tragedy should appreciate the risk that might arise where officers with access to highly classified intelligence information are experiencing a crisis created by poorly written or implemented agency policy.

Internal staff complaint investigation and resolution mechanisms

To bring my submission to the point of the Committee’s interest, and the broader reasons for the Committee’s inquiry. For staff who are confronted with the wicked dilemma of an agency HR system designed for administrators without consideration of its application to cover operatives, it may be an internal staff complaint and resolution mechanism which provides something of a ‘pressure relief valve’; an opportunity for a staff member who has been unable to resolve an impasse which doesn’t appear to fit within a policy intended for another category of worker, to ventilate their situation.

If these mechanisms work well, individual staff members can be heard, issues resolved and policy or decision maker guidance improved as necessary. Where they fail, agencies miss a critical opportunity to avert substantial costs in terms of human and financial resources and security risks.

⁵ www.abc.net.au/news/2019-01-15/suicide-of-afp-officers-prompts-gun-rules-changes/10714804

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At its simplest, a HR officer who brings a kind and open mind to a discussion with a staff member experiencing difficulty might solve the problem at the first point of contact. Agencies recruiting HR staff from the broader public service would do well to prepare them for such a discussion, for example by giving training to HR staff who may not appreciate the challenges of those working long term under cover, or in covert operations, or to educate them on the difficulties of applying standard HR thinking without considering the interplay with an officer's national security obligations.

This utopian outcome is often undermined by supervisor, managers and SES at various levels of abstraction from the staff member and their concern. Perhaps with the best of intention to provide an equitable approach to all staff by strictly following an established policy, a HR manager could nonetheless cause the problem to deepen and escalate by failing to consider the edge cases that will affect some staff, or the very real possibility that the policy simply never worked and just hadn't been tested in this way before. The view from higher levels, such as SES, staff become less identifiably individual people and instead can be treated as numbers, cases, issues that require resolution.

Effective dispute resolution mechanisms therefore provide a final check-point, a last window of opportunity for staff to bring their particular situation to the fore. To perhaps bypass those who have failed to appreciate the matter at the primary decision and review. Failure here can leave the officer confronted with a repeat of the same factors articulated earlier in this submission – but rather than policy written for the broader APS they face an external review system designed for applicants who are not burdened by national security obligations.

Here, an officer experiencing medical, psychological distress and social exclusion because they can't seek help in the normal way, will have difficulty briefing a legal representative while navigating their obligations not to disclose the facts of the matter they wish to have reviewed. They have difficulty making statements to police, a solicitor, a union representative or advocate, a commission or tribunal, a medical specialist, a financial adviser; in summary, professional support that would be readily available to members of the public. It should be apparent that statements, eg. to police, made vague to protect national security will tend to cause suspicion that the individual is lying, or withholding details (indeed they are, but for a noble reason). Imagine how this might affect a staff member seeking to respond to a rape case that occurred in the margins of a covert operation.

Although agencies may have some policies to assist staff in such a crisis, but generally these would be rarely used and details withheld to legal or executive management sections, or buried in obscure policy. Agencies might offer counselling, without considering the staff member may fear speaking to an internal member. Agencies are able to coordinate with police, legal representatives, treating medical professionals, etc. but on each occasion the staff member is required to beg for assistance from the very agency they are in dispute with. Where assistance is offered, it is expensive and opens the agency to risks of disclosure of sensitive information in subsequent proceedings.

Against this wall of indifference from their agency, and unable to ventilate their difficulties at home or with professional counsellors outside their workplace, a staff member could quickly fall into a desperate crisis.

It is my view that the dispute and complaint mechanisms have a vital role within the intelligence agencies this Committee is charged with overseeing. However, it is my view that agencies fail to appreciate the costs of a failed resolution. Every effort should be made to resolve disputes internally, even if this means adopting an approach that gives intelligence officers a generous opportunity to present their case, allowing for the difficulties of overcoming the many challenges I have described in this submission.

In addition, should internal dispute resolution fail, agencies would be well advised to recognise the challenges which confront staff members seeking external review (articulated above); agencies would save substantial costs and reduce risks by offering proactive and genuine support to engage external review mechanisms. I have tried to make clear that doing so is a calculation in favour of self interest, not charity.

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Conclusion

The Committee may wish to seek advice from the agencies how much external reviews cost them using the current hostile approach by some agencies. Very little public information is currently available^{6 7} but the public might expect it to be in the order of costs spent on high profile external reviews⁸ (although I grant that protecting against illegal disclosure of classified information is substantially different from staff seeking external review for legitimate complaints, however, it is hard to ignore that a staff member in distress might be supported not to make such a disclosure). Agencies adopting a more cooperative approach may provide a range of benefits for staff, reduced security risk and savings to the federal budget.

If the Committee were to consider it necessary and appropriate, and with appropriate approvals, I would welcome the opportunity to provide a classified expansion of my views in a closed hearing.

Thankyou to the Committee members and secretariat for considering my submission.

Damon O’Hara

Constituent of the electorate of Canberra, ACT

I acknowledge the traditional custodians of the land upon which the Committee meets, and where I live, Ngunnawal Country, and pay respects to elders past, present and emerging.

⁶ www.igis.gov.au/what-we-do/inquiries#accordion-117

⁷ [www.asio.gov.au/sites/default/files/Annual Report 2020-21 WEB.pdf](http://www.asio.gov.au/sites/default/files/Annual%20Report%202020-21%20WEB.pdf) [records details of the ASIO Ombudsman supporting employees through internal reviews and mediation, and details of several AAT matters but none arising from staff complaints]

⁸ www.theguardian.com/australia-news/2022/jun/23/coalition-government-spent-6m-prosecuting-bernard-collaery-and-other-whistleblowers

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