



Submission to the Select Committee on a National Integrity Commission

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Introduction

The purpose of this submission is to provide the Committee with an overview of the role of the Inspector-General of Intelligence and Security. The submission does not make any recommendations regarding the establishment of a national integrity commission but notes the specialised nature of intelligence oversight and the effectiveness of current arrangements.

Role of the Inspector-General of Intelligence and Security

The Inspector-General of Intelligence and Security (IGIS) is an independent statutory officer who reviews the activities of the Australian intelligence agencies:

- Australian Security Intelligence Organisation
- Australian Secret Intelligence Service
- Australian Signals Directorate
- Australian Geospatial-Intelligence Organisation
- Defence Intelligence Organisation
- Office of National Assessments.¹

The overarching purpose of IGIS's activities is to provide assurance that each intelligence agency acts legally and with propriety, complies with ministerial guidelines and directives, and acts consistently with human rights.²

In accordance with the *Inspector-General of Intelligence and Security Act 1986* (the IGIS Act) the Inspector-General undertakes regular inspections of the operational activities of the Australian intelligence agencies. The Inspector-General also conducts inquiries under the IGIS Act, either at the request of a Minister, in response to complaints, or of her own motion. When conducting an inquiry the Inspector-General has power to require any person to produce documents and provide information.³ All IGIS inquiries are conducted in private.⁴ There are limits in the IGIS Act to prevent the use of information and documents obtained by compulsive powers from being admissible as evidence.⁵

The Inspector-General also has functions under the *Public Interest Disclosure Act 2013* (PID Act) in relation to disclosures by current and former public officials about conduct relating to intelligence agencies. The definition of disclosable conduct in the PID Act includes maladministration, abuse of public trust and corruption.⁶

The IGIS office currently has 16 staff (plus the Inspector-General) and an annual budget of \$3m.

¹ In addition to these six agencies the IGIS can be requested by the Prime Minister to inquire into an intelligence or security matter relating to any Commonwealth agency, see s 9(3) of the IGIS Act

² See s8 & 9 of the IGIS Act for more details on inquiry functions and s9AA for limits

³ See s18 of the IGIS Act

⁴ See s17(1) of the IGIS Act

⁵ See s18(6) of the IGIS Act. Information and documents obtained from a person under s18 are not admissible in evidence against the person except in relation to offences under the IGIS Act and related offences under the Criminal Code and Crimes Act.

⁶ See s29 of the PID Act

Practical issues relating to oversight of intelligence agencies

The details of most of the activities of the intelligence agencies cannot be disclosed publicly without prejudicing national security or foreign relations. The IGIS office is a specialised oversight agency that is equipped to deal with managing highly classified information. All IGIS staff have the highest level of security clearance and the office space and equipment used by IGIS staff is accredited in accordance with the relevant security standards. The difficulties of replicating this ability to deal with highly classified information in a new agency should not be underestimated.

Through the program of regular inspections, periodic meetings, projects, briefings and the conduct of inquiries the Inspector-General and her staff have a detailed understanding of the unique work and culture of Australia's intelligence agencies. The staff of the intelligence agencies are also acutely aware of the oversight by the IGIS office.

There are established procedures in each of the intelligence agencies for encouraging staff to take any concerns about illegal or improper conduct to the Inspector-General. For current staff of intelligence agencies there are mechanisms to ensure that, where applicable, concerns that include classified information can be conveyed to the IGIS office by secure means. The IGIS office deals with information obtained from agencies in accordance with security requirements and the IGIS Act contains strict secrecy provisions. When dealing with former staff or agents of intelligence agencies the IGIS office has established procedures to ensure that the identity of agents and the secrecy of classified information can be maintained.

IGIS role in investigating allegations of corruption and misconduct

The intelligence agencies, like other organisations, have internal mechanisms to detect and deter individual misconduct and corruption. As the staff of intelligence agencies are also subject to the highest level of security clearance there is a significant additional layer of scrutiny imposed on those staff by the internal security area of their agency and, for Defence agencies, the Australian Government Security Vetting Authority. This includes regular security vetting as well as the conduct of psychological assessments. Individual misconduct which in another agency might be dealt with through disciplinary measures (such as minor credit card fraud) can result in a loss of security clearance and subsequent loss of employment for staff in an intelligence agency. Given the necessary secrecy surrounding the work of the intelligence agencies it is appropriate that most individual misconduct and personnel security matters be dealt with internally by the agencies.⁷ The IGIS office oversees the mechanisms in place in the agencies and is an avenue for staff to complain if they consider there has been maladministration or corruption.⁸

The Inspector-General is able to conduct formal IGIS Act inquiries into allegations of inappropriate or corrupt conduct where appropriate. This can include allegations of systemic problems or

⁷ Where, during an inquiry, the IGIS forms the opinion that there is evidence that a person who is a member of a Commonwealth agency has been guilty of a breach of duty or misconduct and that evidence is of sufficient weight to justify the Inspector-General doing so, the Inspector-General must bring the evidence to the notice of the relevant agency head (or if the person is the agency head, the Minister). See s17(10) of the IGIS Act

⁸ In accordance with the PID Act and also the IGIS Act. For ASIS and ASIO staff the IGIS has a particular role in reviewing employment related matters as these staff are not employed under the Public Service Act – see s8(6) of the IGIS Act

widespread misconduct. For example in 2011 there was an inquiry into allegations of inappropriate security vetting practices;⁹ in 2010 there was an inquiry into the possible compromise of a compliance test¹⁰, and in 2009 there was an inquiry into allegations that ASD had spied on the Defence Minister¹¹. Since the introduction of the PID Act the IGIS office has been notified of a small number of disclosures concerning alleged misconduct in procurement and has received a number of disclosures alleging maladministration in staffing matters. Some IGIS Act and PID Act inquiries and investigations have identified areas for improved practice but none has indicated anything approaching widespread misconduct or corruption.

Effectiveness of current arrangements

Overall the experience of this office is that the level of corruption and misconduct in Australian intelligence agencies is very low and those agencies have sound mechanisms in place for detecting and deterring such activities. The apparent low levels of individual corruption and misconduct may be attributable to the highly focussed security vetting process. The scheme of IGIS oversight enables the early detection of any systemic issues.

The IGIS office has been providing specialised oversight of the operational work of the intelligence agencies for 30 years through a program of regular inspections, complaint handling and the conduct of inquiries. That oversight work means the IGIS office is uniquely equipped to deal with highly classified information and has a detailed and comprehensive understanding of the operations and culture of the intelligence agencies.

Individuals can, and do, bring allegations of misconduct and maladministration to the attention of the IGIS office and there are sufficient powers under the IGIS Act and the PID Act to enable the Inspector-General to inquire into these matters. The Inspector-General can, and does, initiate inquiries of her own motion into a broad range of matters relating to the legality and propriety of the activities of the intelligence agencies.

If the Committee is inclined to recommend the establishment of another body which would have overlapping jurisdiction with the Inspector-General then I would suggest that the Committee seek the views of the intelligence agencies about the effectiveness of the current arrangements and the potential administrative and security burden on them of another oversight body.

⁹ See the 2011-12 IGIS annual report

¹⁰ See the 2010-11 IGIS annual report

¹¹ See the 2008-09 IGIS annual report