

Issues

Structure and powers of the oversight committee

- 4.1 As intelligence issues have become more prominent in Government decision making, intelligence agencies have expanded and expenditure has risen, the work of the scrutiny committee has grown. The report of the inquiry into Australian intelligence agencies conducted by Philip Flood recommended that the mandate of the Parliamentary Joint Committee on ASIO, ASIS and DSD be extended to all of Australia's intelligence agencies – that is, it should cover ONA, DIO and DIGO on the same basis as it now covers ASIO, ASIS and DSD. The intention is to provide comprehensive parliamentary oversight of the administration and expenditure of all intelligence agencies, including the processes by which ONA and DIO arrive at their assessments.
- 4.2 The Committee supported the recommendations of the Flood report. Their own deliberations on the report and the experience of the first Parliament of operations for the Committee led members to write to the Prime Minister suggesting additional changes to the Intelligence Services Act as it affected the work and structure of the Committee. Specifically, the members noted that Mr Flood's recommendation, if agreed to, would further increase the work of the Committee. Therefore, in order to maintain effective scrutiny of this larger group of agencies and continue with the heavy program of legislative review, the Committee recommended the following changes be made to the *Intelligence Services Act 2001*:

- **Changes to the size of the Committee**

The rising significance of intelligence and security issues, the level of activity of the Committee and the pressure of work that this has generated suggest that the Committee should be expanded in size. The Members of the Committee are cognizant of the need to preserve the Committee as a manageable and cohesive group; however, they believe that a committee of nine would remain workable - five Members of the House and four Senators, with a government majority preserved by the odd numbers from the House.

- **Position of a Deputy Chair**

There is no deputy chair specified in the Act. This position can be very useful especially if there are to be negotiations on particular matters that are on occasions delegated by the Committee to representatives from both 'sides'. Especially if the Committee is expanded, a position of deputy chair should be inserted.

- **Changes to the name of the Committee**

If the inclusion of ONA, DIO and DIGO is agreed, the name would need to be altered to reflect its broader coverage. The Committee suggests the name be changed to the Joint Parliamentary Committee on Intelligence.

- **Changes to the powers of the Committee**

The intention of the Act has been to restrict the Committee to an oversight of administration and expenditure by the collection agencies and that any operational matters be dealt with by the Inspector General of Intelligence and Security. Nevertheless, to carry out the oversight as currently specified, Members believe that it is necessary for the Committee to be given access to the classified annual reports of each of the agencies. It is not possible to comprehend fully the administration or expenditure of the agencies without full access to the annual reports. Staff in the secretariat are cleared to the level of an ASIS officer, so there should be no inhibition on the grounds of appropriate clearances. A number of non-statutory changes to the procedures and equipment necessary for the proper handling and storage of classified documents have already been put to the responsible ministers.

- The definition within the Act of matters upon which ministers might seek exclusion of material from committee reports should be tightened. The general principle appears to be operationally

sensitive matters and national security grounds. This is quite acceptable to the Committee. However, Clause 7, Schedule 1 of the Act, which deals with restrictions on disclosures to parliament, broadens the definition to include matters such as 'the conduct of Australia's foreign relations'. A similar area of 'concern' was the subject of long-running disputes over the reporting by the Joint Committee on Foreign Affairs and Defence between 1951 and 1973. During this time, the Committee could not report publicly to Parliament without the permission of the Minister for Foreign Affairs on the grounds that matters of foreign affairs were too sensitive and the Committee's reports might have an adverse effect on Australia's foreign relations. Since 1973 when this restriction was lifted, the Committee has tabled dozens of reports, often on highly sensitive matters, without detriment to our foreign relations. Such a restriction should not be placed on this Committee.

■ **Provision to establish sub-Committees**

In view of the increased workload of the Committee, consideration should also be given to amendments to provide for the possible establishment of a sub-committee or sub-committees along the lines of Section 9 of the *Public Accounts and Audit Committee Act 1951* and Section 10 of the *Public Works Committee Act 1969* which empower those Committees to establish "Sectional Committees" (in effect sub-committees).

- 4.3 Amendments to the Intelligence Services Act to reflect these recommendations are anticipated in the Budget session of Parliament.

Reviews of administration and expenditure

- 4.4 The volume of work both for the Committee and the agencies in reviewing administration and expenditure has been considerable. It was the Committee's view in the last parliament that a major, comprehensive review should be conducted only every second or third year and that in the intervening years there should be a more targeted review examining a specific area of administration or expenditure identified in the larger inquiry. This was the process adopted in the last Parliament and it led to the examination of agency security measures in 2003.
- 4.5 With six agencies to review this procedure will be even more important.

Security matters and public reporting

- 4.6 A continuing challenge for the members of the Committee has been the practical question of the handling of classified information supplied to the Committee. Throughout the last Parliament, as the work load of the Committee increased, the volume of classified paper handled by members increased. Members have revised their protocols for the handling and storing of documents and the departments of the House of Representatives and the Senate have been involved in the provision of the necessary equipment. ASIO has provided advice to both the members and the staff of the Committee. This has been valuable; it is much appreciated. Assessments of the security needs of the Committee are continuing.
- 4.7 The Intelligence Services Act outlines some processes for the Committee to ensure the security of sensitive information affecting national security. Most importantly, reports of the Committee are not tabled until they have been checked by the Agencies to ensure that no matters of national security are revealed. (Schedule 1, clause 7 (1) (2) (3) and (4)). The Committee believes this is an important safeguard for itself, the agencies and the country. Throughout the last Parliament, there was a continuous dialogue between the agencies and the Committee on matters contained in the Committee's reports. The agencies raised few matters of national security in this clearance process and the Committee objected to none of the requests made to it. Some requests for deletion of a non-national security nature were also made and they were given generous consideration.
- 4.8 However, as flagged in the last review of administration and expenditure, the Committee has sought some tightening of the definition in the Act of matters to be excluded from public reports of the committee (See paragraph 4.2, dot point 5). The Committee may also seek to review the public reporting by the agencies at some time in the future (See recommendation 9 of the March 2005 Review of Administration and Expenditure). There do appear to be some anomalies in the interpretation of 'national security' and clearly defined levels of disclosure are matters central to any oversight committee and to public confidence in the work of the Committee and the agencies.
- 4.9 In the first (Annual Report 2001-2002) and last review of administration and expenditure (Review of Administration and Expenditure for ASIO, ASIS and DSD, 2005) the Committee

recommended that DSD provide separate financial statements. This recommendation was rejected after the first review, but reiterated this year. With the Department of Defence moving to accrual accounting, the difficulty of separating the DSD accounts should be addressed and separate reporting made easier. The Committee looks forward to the Government's response to this recommendations in the review tabled in March 2005.

Support for the Committee

- 4.10 Staffing of the secretariat for this Committee is complicated by the need (Schedule 1, clause 21) for high level clearances for members of the secretariat. This is a time consuming process and makes staff changes difficult, especially at a time when the demand for clearances within the intelligence agencies is rapidly expanding along with the expansion of the agencies themselves. Clearances for members of the Hansard staff and the foreshadowed need for clearances for designated staff within members' offices have added to the complexity of running the Committee. There has also been considerable effort made by the Serjeant's Office in House of Representatives and the Black Rod's Office in the Senate to accommodate the security needs of the Committee as its work has developed. The Committee therefore is grateful to all the staff of the Parliament who contribute to its efficient operation.
- 4.11 The Chairman thanks the members of the Committee for their time and their cooperative approach to the Committee's work over the past year.

Senator Alan Ferguson
Acting Chair

