

## The Joint Parliamentary Committee on ASIO, ASIS and DSD

- 1.1 The Committee was established under the *Intelligence Services Act 2001*. The Act governs its size, structure, functions, procedures and powers. Some amendments were made to the functions of the Committee during the course of the last Parliament, namely those relating to the Committee's responsibilities to review specified legislation and regulations. Further amendments are foreshadowed for this Parliament relating to recommendations of the Flood inquiry into Australian Intelligence Agencies. These changes and proposed changes will be outlined in detail below.

### **Size and structure**

- 1.2 The Committee is a joint committee of the Parliament comprised of seven members, four government members and three opposition members. Of the four government members, two are from the House of Representatives and two are from the Senate. The Opposition members are comprised of two members of the House and one Senator.
- 1.3 Members are appointed by resolution of the House or the Senate on the nomination of the Prime Minister or the leader of the Government in the Senate. Prior to nomination, consultation must take place with the leaders of recognised parties in each of the Houses.

## Functions

- 1.4 Under section 29 of the Intelligence Services Act, the Committee is charged with reviewing the administration and expenditure of ASIO, ASIS and DSD, including their annual financial statements. Other matters may be referred by the responsible Minister or by a resolution of either House of the Parliament. In addition to these functions initially within the Act, the Committee is required to review the operation, effectiveness and implications of:
- the amendments made by the *Security Legislation Amendment (Terrorism) Act 2002* and the following acts:
    - ⇒ the *Border Security Legislation Amendment Act 2002*;
    - ⇒ the *Criminal Code Amendment (Suppression of Terrorist Bombings) Act 2002*; and
    - ⇒ the *Suppression of the Financing of Terrorism Act 2002*;
  - Division 3 of Part III of the *Australian Security Intelligence Organisation Act 1979*; and
  - the amendments made by the *Australian Security Intelligence Organisation Legislation Amendment (Terrorism) Act 2003*, except item 24 of Schedule 1 to that Act (which included Division 3 of Part III in the *Australian Security Intelligence Organisation Act 1979*).
- 1.5 Amendments to the *Criminal Code Act 1995*, made in March 2004, further tasked the Committee with reviewing regulations which specify organisations as terrorist organisations for the purposes of section 102.1 of the Criminal Code. The Committee's findings on its reviews of these regulations are to be tabled before the end of the disallowance period, 15 sitting days from the tabling of the regulation.

## Procedures and powers

- 1.6 The Committee is a statutory committee. Unlike other statutory or standing committees of the Parliament, the ASIO, ASIS and DSD Committee has very specific limitations placed on its operations, dictated by the nature of the agencies it scrutinises and the subject matters with which it deals. Balancing national security and Parliamentary scrutiny is a constant challenge for the Committee.

- 1.7 Limitations are broadly directed at Committee scrutiny of operational matters. Operational matters are monitored by the Inspector-General of Intelligence and Security, who operates under his own Act of Parliament. Specific prohibitions on the Committee's activities include the following:
- reviewing the intelligence gathering priorities of the agencies;
  - reviewing sources of information, other operational assistance or operational methods available to the agencies;
  - reviewing particular operations, past, present or proposed;
  - reviewing information provided by a foreign government or its agencies, without the consent of that government to the disclosure;
  - reviewing an aspect of the activities of the agencies that does not affect an Australian person;
  - reviewing rules within the Act relating to the privacy of Australian citizens; or
  - conducting inquiries into individual complaints in relation to the activities of the agencies.<sup>1</sup>
- 1.8 For statutory committees of the Parliament, where its governing Act is silent, a committee's powers and privileges are those of all committees of the Parliament. These powers include the power to require the attendance of witnesses and the production of documents. The Intelligence Services Act specifies that the Committee may give a person written notice requiring the person to appear before the Committee with at least 5 days notice, as well as notice of any documents required by the Committee.<sup>2</sup> However, the Minister may prevent the appearance of a person (not an agency head) before the Committee or prevent the provision of documents to the Committee so that operationally sensitive information will not be disclosed. In order to achieve this, the Minister must provide a certificate outlining his opinion to the presiding member of the Committee, to the Speaker of the House of Representatives, the President of the Senate and the person required to give evidence or produce documents.<sup>3</sup>
- 1.9 The Intelligence Services Act sets out that the Committee must not require a person or body to disclose to the Committee operationally

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1 *Intelligence Services Act 2001*, subsection 29(3)

2 *Intelligence Services Act 2001*, clause 2 of Schedule 1

3 *Intelligence Services Act 2001*, clause 4 of Schedule 1

sensitive information.<sup>4</sup> There is also a protection against the disclosure in Committee reports of operationally sensitive information. Under subclause 7(1) of Schedule 1, the Committee must not disclose in a report to a House of the Parliament specified information, namely:

- the identity of a person who is or has been a staff member of ASIO, ASIS or DSD; or
- any information from which the identity of such a person could reasonably be inferred; or
- operationally sensitive information that would or might prejudice:
  - ⇒ Australia's national security or the conduct of Australia's foreign relations; or
  - ⇒ the performance by an agency of its functions.<sup>5</sup>

1.10 Unlike the reports of other parliamentary committees, which are privileged documents which may not be disclosed to anyone outside the committee itself until after tabling, the ASIO, ASIS and DSD Committee must obtain the advice of the responsible Minister or Ministers as to whether any part of a report of the Committee discloses a matter referred to in subclause 7(1) of Schedule 1. A report may not be tabled until this advice is received.

1.11 Finally, to protect the national security status of the Committee's work and to maximise the Committee's access to information, the Intelligence Services Act requires that staff of the Committee must be cleared for security purposes to the same level and at the same frequency as staff members of ASIS.<sup>6</sup> The Committee is grateful for the assistance of ASIS in this regard.

## **Proposed changes to the Intelligence Services Act**

1.12 As a result of the Flood review of the Australian Intelligence Agencies, released in July 2004, changes to the Intelligence Services Act have been foreshadowed. A number of these changes are likely to affect the functions and operations of the Committee. The extension of the Committee's oversight to the analytical intelligence agencies,

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4 *Intelligence Services Act 2001*, clause 1 of Schedule 1.

5 *Intelligence Services Act 2001*, subclause 7(1) of Schedule 1.

6 *Intelligence Services Act 2001*, clause 21 of Schedule 1.

the Office of National Assessment (ONA) and the Defence Intelligence Organisation (DIO) and the inclusion of the Defence Intelligence Geospatial Organisation (DIGO) will increase the work load of the Committee considerably. The work load had already expanded in the last Parliament with the addition of the legislative review function. To this end, the Committee itself also put to Government recommendations regarding the size, structure and functions of the Committee. The Committee's suggestions included an increase in membership from 7 to 9 members, the ability to form sub-committees, and the creation of a position of Deputy Chair. The committee also sought a tightening of the definition of matters that might be excluded from Committee reports under paragraph 7(1)(c) of Schedule 1.

- 1.13 A variety of practical matters affecting the secure handling of documents and reports, staffing and clearances and the security arrangements in secretariat and members' offices have been dealt with by negotiation and agreed protocols between the Committee and Ministers throughout the Parliament.

