

Introduction

Referral of Bills to the Committee

- 1.1 On 27 June 2001 the Minister for Foreign Affairs introduced into the House of Representatives the Intelligence Services Bill 2001 and the Intelligence Services (Consequential Provisions) Bill 2001. On the same day the Attorney-General introduced into the House of Representatives the Cybercrime Bill 2001.
- 1.2 On 27 June 2001 the House agreed to the establishment of a Joint Select Committee on the Intelligence Services (JSCIS) to inquire into and report on the two Intelligence Services Bills and the provision in the Cybercrime Bill relating to the Australian Secret Intelligence Service (ASIS) and the Defence Signals Directorate (DSD) – Liability for Certain Acts. The Senate concurred with the appointment of the JSCIS on 28 June 2001.¹
- 1.3 The Committee's resolution of appointment calls upon it to report on the proposed legislative reforms no later than 20 August 2001. Due to the receipt of a submission from ASIS, dated 7 August 2001, it became apparent that ASIS would require further examination through a public hearing. In view of this, the Committee sought, and was granted leave, from the Parliament to report no later than 27 August 2001.²

1 House of Representatives, *Votes and Proceedings*, No. 196, Wednesday, 27 June 2001, p. 2411; Senate, *Journals of the Senate*, No. 197, Thursday, 28 June 2001 p. 4437.

2 House of Representatives, *Votes and Proceedings*, No. 201, Thursday, 9 August 2001, p. 2134; Senate, *Journals of the Senate*, No. 201, Thursday, 9 August 2001, p. 4636.

Origins and purpose of the Bills

- 1.4 The Intelligence Services Bill 2001 (IS Bill) is the key Bill under review. The Intelligence Services (Consequential Provisions) Bill 2001 provides for consequential changes to other Acts as a result of the proposals in the IS Bill. The Cybercrime Bill 2001 proposes the enactment of seven new computer offences. However, the Committee is only required to review proposed section 476.5 – Liability for Certain Acts.
- 1.5 The focus of the IS Bill is the Australian Secret Intelligence Service (ASIS) which was established by executive direction on 13 May 1952. In 1977 the Government publicly acknowledged the existence of ASIS as Australia’s foreign intelligence agency.
- 1.6 ASIS is responsible for covert foreign intelligence collection. Its work is highly sensitive and, therefore, details of its operations are not revealed. In 1995 the Commission of Inquiry into the Australian Secret Intelligence Service (the Samuels and Codd Report) reported that ASIS ‘represents a valuable element in the advancement of Australia’s policies and in the protection of its security.’³
- 1.7 The findings of the Samuels and Codd Report provide the basis for the IS Bill. The Report recommended that legislation be created ‘to affirm ASIS’s existence and provide authority for its activities’.⁴ The IS Bill reflects this recommendation by seeking to provide a legislative basis for ASIS which details levels of accountability and oversight, and sets out the functions of ASIS and of the Defence Signals Directorate (DSD). The Minister for Foreign Affairs, in his second reading speech introducing the IS Bill, stated:

In line with one of the key recommendations made by the Commission of Inquiry, which reported to Government in 1995, the Government determined that ASIS should be placed on a statutory footing. The Commission of Inquiry had maintained that legislation to affirm ASIS’ existence and provide authority for its activities was both desirable in principle and would be of benefit in practice. The Commission’s report stated that in a parliamentary democracy, the existence of an agency such as ASIS should be

3 Commission of Inquiry into the Australian Secret Intelligence Service, *Report on the Australian Secret Intelligence Service*, Public Edition, March 1995, p. xix.

4 Commission of Inquiry into the Australian Secret Intelligence Service, *Report on the Australian Secret Intelligence Service*, Public Edition, March 1995, p. xxix.

endorsed by the Parliament and the scope and the limits of its functions defined by legislation.⁵

- 1.8 Other key parts of the IS Bill include:
- the provision of immunities for both ASIS and DSD in respect of the proper conduct of their functions (clause 14);
 - the provision of rules to protect the privacy of Australians (clause 15);
 - the creation of a Parliamentary Joint Committee for ASIS and ASIO which will examine expenditure and administration of these agencies (clauses 28 to 32 and Schedule 1);
 - the protection of the identity of ASIS staff other than the Director-General (clause 41 and Schedule 1, clauses 6 and 7); and
 - further oversight by the Inspector-General of Intelligence and Security (IGIS) through the additional power to ensure agency compliance with appropriate ministerial authorisations (clauses 8 and 9).
- 1.9 The IS (Consequential Provisions) Bill 2001 provides for a number of amendments to existing legislation as a result of ASIS being placed under legislation. In particular, the *Australian Security Intelligence Organisation Act 1979* is amended through the repeal of Part VA relating to the Parliamentary Joint Committee on ASIO (PJCA). The PJCA is replaced with the Parliamentary Joint Committee on ASIO and ASIS through the IS Bill.
- 1.10 The *Inspector-General of Intelligence and Security Act 1986* (IGIS Act) is amended to ensure that the IGIS annual report must include comments on the extent of compliance by ASIS and DSD in relation to clause 15 of the IS Bill – rules to protect privacy of Australians. In addition, subsection 19(2) of the IGIS Act is repealed. This means that there will be no restrictions on IGIS access to the premises of agencies covered under the IGIS Act.
- 1.11 The Cybercrime Bill 2001 updates laws to address a range of cybercrime activities such as hacking, virus propagation, denial of services attacks, and website vandalism. The Bill proposes the enactment of seven new computer offences and investigation powers. The Committee's review focuses on part of a provision proposed to be inserted in the *Criminal Code Act 1995*: division 476.5 – Liability for Certain Acts. The provision establishes limited immunity from civil or criminal liability to staff or agents of ASIS or DSD when performing certain activities which might

5 The Hon Alexander Downer, MP, Minister for Foreign Affairs, Intelligence Services Bill 2001, Second Reading, House of Representatives, *Hansard*, 27 June 2001, pp. 27077-78.

otherwise be prohibited by Australian laws dealing with computer-related acts.

Relevant reviews and inquiries

- 1.12 This section reviews the findings and recommendations of relevant inquiries and, in particular, the Commission of Inquiry into the Australian Secret Intelligence Service which provides the origins for the IS Bill.

The Hope Royal Commissions

- 1.13 In 1974 the Royal Commission on Intelligence and Security (the first Hope Report) was established. In 1977 the Government responded to the findings of the Commission. In relation to ASIS, Justice Hope stated 'that the Government accept the continuing need for an Australian secret intelligence service and that ASIS be retained to fulfil that role.'⁶ The Government acknowledged, for the first time, the existence of ASIS, and stated that its functions were 'to obtain, by such means and subject to such conditions as were prescribed by the Government, foreign intelligence for the purpose of protecting or promoting Australia or its interests.'⁷
- 1.14 While ASIO was placed on a statutory footing by the Menzies Government in 1956, the first Hope Report resulted in a new and expanded Act for ASIO in 1979.
- 1.15 An important feature of the first Hope Report was the recommendation that legislation underpin ASIS. Justice Hope stated:

The fundamental considerations favouring Parliamentary sanction for ASIS is that the Parliament is the instrument of democratic control of government in this country. So a statute establishing ASIS is a statute authorising the Minister to act to control the service on behalf of the Parliament itself, speaking for the people. And the Minister is responsible to the Parliament, in a general way, for ASIS.⁸

6 Commission of Inquiry into the Australian Secret Intelligence Service, *Report on the Australian Secret Intelligence Service*, Public Edition, March 1995, p. 2.

7 Commission of Inquiry into the Australian Secret Intelligence Service, *Report on the Australian Secret Intelligence Service*, Public Edition, March 1995, p. 3.

8 Commission of Inquiry into the Australian Secret Intelligence Service, *Report on the Australian Secret Intelligence Service*, Public Edition, March 1995, p. 24.

- 1.16 The then Government, however, did not implement Justice Hope's recommendation.
- 1.17 In 1983 the Royal Commission on Australia's Security and Intelligence Agencies (the second Hope Report) was established. The objectives of this Commission were 'to review Australia's security and intelligence agencies, especially as they had operated in the period since the first Hope Report, and to assess the implementation of Government decisions on that earlier report.'⁹ In addition, the Commission was asked to inquire into the actions of the Government surrounding the expulsion from Australia of the First Secretary of the USSR embassy, Mr Valeriy Ivanov, and the involvement of Mr David Coombs.
- 1.18 Justice Hope was also asked to inquire into and report on an incident at the Sheraton Hotel, Melbourne in November 1983.¹⁰ As a result of the report of this incident, the Government accepted the recommendation that ASIS's covert action function be abolished. A report on this issue was tabled in February 1984.
- 1.19 In May 1985 the Government tabled edited versions of Hope's General Report, a report on ASIO, and a report on the ONA and JIO. Reports on ASIS and on the DSD were delivered to the Government and provided to the Leader of the Opposition, but were not made public.
- 1.20 One of the key recommendations arising from the second Hope Report was the establishment of the office of Inspector-General of Intelligence and Security (IGIS) that would have an oversight and monitoring role of the various intelligence agencies.¹¹
- 1.21 Justice Hope concluded, as he did in his first report, that it was 'neither necessary nor appropriate that a special parliamentary committee be established' to supervise the operations of ASIO.¹² Notwithstanding this, the Government decided to establish a parliamentary committee by inserting a new Part VA into the ASIO Act.

Commission of Inquiry into the Australian Secret Intelligence Service

- 1.22 The Commission of inquiry into the Australian Secret Intelligence Service (the Samuels and Codd Report) was established in 1994. This inquiry

⁹ *ibid.*, p. 4.

¹⁰ *ibid.*, p. 4.

¹¹ *ibid.*, p. 4.

¹² Parliamentary Research Service, *A History of Inquiries and Investigations into Australia's Intelligence and Security Agencies*, 6 April 1994, p. 15.

responded to a series of media reports which asserted that ASIS was subject to 'various examples of operational and administrative inefficiency.' These reports were based on information supplied by former officers of ASIS. The culmination of these media reports was a *Four Corners* program on 21 February 1994.¹³

- 1.23 On 23 February 1994 the then Minister for Foreign Affairs established the inquiry into the operations and management of ASIS. One of the terms of reference focused on the control and accountability of ASIS. The Minister, in discussing the reasons for the inquiry, suggested the need 'to consider the desirability of a legislative charter and the adequacy of existing management systems and protection mechanisms.'¹⁴
- 1.24 The Samuels and Codd Report responded specifically to claims that ASIS was operating out of control. The report stated:
- On the contrary its operational management is well structured and its tactical decisions are thoroughly considered and, in major instances, subject to external approval. Its operational people are skilled and discreet, and the product it gathers is well regarded by its customers and professional assessors.¹⁵
- 1.25 In response to matters covered by the terms of reference, Samuels and Codd concluded that 'in a number of respects, the control and accountability, and the internal organisation and management, of the Service could and should be improved, and we have recommended accordingly.'¹⁶
- 1.26 The first area of enhancement recommended by Samuels and Codd was the need for a legislative base for ASIS. The Report stated that we are 'very firmly of the view that legislation to affirm ASIS's existence and to provide authority for its activities is desirable in principle and will be of benefit in practice.' Samuels and Codd reported that the 'Service itself through the Director-General has expressed the view that a statutory basis for ASIS would enhance both the sense and the reality of its accountability.'¹⁷
-

13 Commission of Inquiry into the Australian Secret Intelligence Service, *Report on the Australian Secret Intelligence Service*, Public Edition, March 1995, p. xx.

14 Commission of Inquiry into the Australian Secret Intelligence Service, *Report on the Australian Secret Intelligence Service*, Public Edition, March 1995, p. xxi.

15 Commission of Inquiry into the Australian Secret Intelligence Service, *Report on the Australian Secret Intelligence Service*, Public Edition, March 1995, p. xxiii.

16 Commission of Inquiry into the Australian Secret Intelligence Service, *Report on the Australian Secret Intelligence Service*, Public Edition, March 1995, p. xxiii.

17 Commission of Inquiry into the Australian Secret Intelligence Service, *Report on the Australian Secret Intelligence Service*, Public Edition, March 1995, p. xxix.

- 1.27 Samuels and Codd concluded that ‘legislation should help to dispel the persistent mythology that the Service is unaccountable and out of control.’¹⁸
- 1.28 A second area of enhancement focused on the need for parliamentary oversight of ASIS through a special committee. Samuels and Codd proposed the establishment of a ‘standing parliamentary joint committee with a broad charter enabling it to review the activities, expenditure and administration of ASIS.’ The committee would be able to initiate its own inquiries ‘but not into operationally sensitive matters.’¹⁹
- 1.29 As there is already a Parliamentary Joint Committee on ASIO, Samuels and Codd proposed that one parliamentary committee oversee both ASIO and ASIS.
- 1.30 Samuels and Codd examined issues relating to the degree of protection against the public disclosure of security sensitive information. They concluded that ‘there is value in maintenance of the voluntary D Notice system’. This is a process by which ‘media editors are requested not to publish certain sensitive information’ such as details on ASIS operations.²⁰
- 1.31 The D Notice system originated in 1952 and was modelled closely on the British system. D notices are issued under the authority of the Defence, Press and Broadcasting Committee (the D Notice Committee). The Committee is chaired by the Minister for Defence. In 1995, Samuels and Codd reported that the Committee had not met since 1982.²¹
- 1.32 The National Archives of Australia reports that there are currently four D Notices which have been in effect since 1982. These include:
- D Notice 1: capabilities of the Australian Defence Force, including aircraft, ships, weapons and other equipment;
 - D Notice 2: the whereabouts of Mr and Mrs Vladimir Petrov;
 - D Notice 3: signals intelligence and communications security; and
 - D Notice 4: Australian Secret Intelligence Service.²²

18 Commission of Inquiry into the Australian Secret Intelligence Service, *Report on the Australian Secret Intelligence Service*, Public Edition, March 1995, p. xxix.

19 Commission of Inquiry into the Australian Secret Intelligence Service, *Report on the Australian Secret Intelligence Service*, Public Edition, March 1995, p. xxx.

20 Commission of Inquiry into the Australian Secret Intelligence Service, *Report on the Australian Secret Intelligence Service*, Public Edition, March 1995, p. xxxiv.

21 *ibid.*, p. 113.

22 National Archives of Australia, Fact Sheet 49, D Notices
[<http://www.naa.gov.au/fsheets/fs49.html>]

- 1.33 D Notice 4 requests editors not to publish or broadcast information on ASIS that would lead to:
- the identification of individuals employed by the Director-General of ASIS; or
 - the disclosure of current or projected foreign intelligence activity of ASIS.²³

- 1.34 Samuels and Codd reported that the D Notice system largely fell in to disuse. For example, D Notice 4 was not drawn to the attention of the ABC before it broadcast its February 1994 *Four Corners* program which examined staff complaints against ASIS. When the then Minister, during 1993 and 1994, drew the attention of leading daily newspapers to the D Notice system, the newspapers confessed ignorance that the system was still operating.²⁴ Samuels and Codd stated:

We recognise that the system is not working satisfactorily at present. There is limited awareness of the existence of an ASIS D Notice, let alone of its precise terms; the rationale for the specific proscriptions is not understood; and there is insufficient information in the hands of journalists and editors to enable them to assess whether particular publications would or would not breach the D Notice. The result is that, amongst the individual articles and broadcasts which we have examined in detail, there are to be found some clear (though unintentional) breaches of the D Notice. But we believe that the revival of the system along lines we propose will reduce – although not remove altogether – the risk of such breaches occurring.²⁵

- 1.35 The then Government, in its response to the findings of Samuels and Codd, indicated that it would, in consultation with the media, update and reinvigorate the D Notice system so that it will be more effective in the future.

The Australian Intelligence Community

- 1.36 This section provides a brief overview of the agencies comprising the Australian Intelligence Community (AIC) which includes the:
-

²³ Commission of Inquiry into the Australian Secret Intelligence Service, *Report on the Australian Secret Intelligence Service*, Public Edition, March 1995, p. 120.

²⁴ *ibid.*, pp. 114-115.

²⁵ *ibid.*, p. 117.

- Australian Secret Intelligence Service (ASIS);
- Australian Security Intelligence Organisation (ASIO);
- Office of National Assessments (ONA);
- Defence Signals Directorate (DSD);
- Defence Intelligence Organisation (DIO); and
- Defence Imagery and Geospatial Organisation (DIGO).

1.37 The Inspector-General of Intelligence and Security (IGIS) has an oversight and monitoring role in relation to these six agencies.

Australian Secret Intelligence Service (ASIS)

1.38 ASIS was established by executive decision in 1952. ASIS was closely modelled on its British counterpart, the Secret Intelligence Service.

1.39 Samuels and Codd reported that ASIS's functions have remained essentially unchanged since its establishment. These functions 'embrace the collection and distribution of secret foreign intelligence, associated counter-intelligence activities, and liaison with similar organisations.'²⁶ ASIS intelligence collectors are stationed overseas.

1.40 ASIS's functions have been tied to Directives which focus on the requirements of Government. Samuels and Codd reported, in 1995, that the 'present Directive lays down that ASIS shall accept the guidance on targets and priorities issued from time to time by the Security Committee of Cabinet, or under arrangements approved by that Committee.'²⁷ Samuels and Codd stated:

Until now, the Directive has been the backbone of the control and accountability framework for ASIS. It has defined, and governed, the key relationships which make up that framework. It prescribes the functions of ASIS, the role and responsibilities of the Minister and the Director-General, the relationships between ASIS and other agencies, the main aspects of the administration of the Service, and the appointment and terms of conditions of the Director-General and members of ASIS. It is the source of legal authority for everything ASIS does.²⁸

²⁶ *ibid.*, pp. 1-2.

²⁷ *ibid.*, p. 2.

²⁸ *ibid.*, p. 70.

- 1.41 Samuels and Codd concluded that it was no longer appropriate that the Directive be the sole authority for the existence of ASIS. Their view was that a legislative base should provide the foundation for ASIS. However, Samuels and Codd did acknowledge that the Directive should continue 'to deal with those matters which should remain secret, which are too detailed for legislation or which are likely to require frequent amendment.'²⁹
- 1.42 The ASIS website reports that its major tasks 'can include reporting on major defence, international relations or national economic issues as well as international efforts in support of peace-keeping and against threats from weapons proliferation.'³⁰
- 1.43 ASIS is clear to point out that its functions do not include para-military operations. ASIS states:
- ASIS is not a police or law enforcement agency. It does not have para-military responsibilities and does not employ force or lethal means in carrying out the tasks set for it, nor are ASIS members trained in such techniques. ASIS may only perform functions determined by the Government to protect and promote Australia's national security, foreign relations or economic interests.³¹
- 1.44 ASIS is responsible to the Parliament through the Minister for Foreign Affairs. The total appropriation in the 2001-02 Budget is \$54.304 million.³²

Australian Secret Intelligence Organisation (ASIO)

- 1.45 ASIO is the Commonwealth's domestic security intelligence organisation. It is responsible for protecting Australia and its people from espionage, sabotage, politically motivated violence, the promotion of communal violence, attacks on our defence system and acts of foreign interference. ASIO derives its authority from the *Australian Security Intelligence Organisation Act 1979*.
- 1.46 ASIO's Central Office is in Canberra, and there is a local office in each mainland state and territory capital. For 2001-02 ASIO's average staff level

²⁹ *ibid.*, p. 70.

³⁰ ASIS website: <http://www.asis.gov.au/asiscorpinfo.html>

³¹ ASIS website: <http://www.asis.gov.au/asiscorpinfo.html>

³² Portfolio Budget Statement, 2001-02, *Foreign Affairs and Trade Portfolio, Budget Related Paper No. 1.10*, p. 161.

is 563 and the total appropriation in the 2001-02 Budget is \$69.074 million.³³

Office of National Assessments

1.47 The Office of National Assessments (ONA) is an autonomous body formed under the *ONA Act 1977*. Its key function is to assemble, correlate and report on information relating to international matters that are of political, strategic or economic significance to Australia.

1.48 The ONA's portfolio budget statement indicates that the 'role of the ONA is to enhance the basis for Australian government policy making by anticipating and analysing international change and its implications for Australia and to ensure coordination of the national intelligence effort.'³⁴

1.49 Samuels and Codd reported that 'general tasking of intelligence collection activities and the assessment of intelligence products are carried out by ONA or by committees and processes it chairs or directs.' Samuels and Codd stated:

ONA, the committees it services, and the documents they produce, contribute to the general tasking and assessment of ASIS from outside the Minister-ASIS-DFAT relationship. This strengthens the extent to which the Government, particularly through the Security Committee of Cabinet (SCOC) and the Secretaries Committee on Intelligence and Security (SCIS), is able to assure the accountability and control of ASIS.³⁵

1.50 For 2001-02 ONA's average staffing level is 55 and the total appropriation in the 2001-02 Budget is \$7.1 million.³⁶

Defence Signals Directorate

1.51 The functions of the Defence Signals Directorate (DSD) as discussed in clause 7 of the IS Bill are 'to obtain intelligence about the capabilities, intentions or activities of people or organisations outside Australia in the form of electromagnetic energy, whether guided or unguided or both, or

33 Portfolio Budget Statement, 2001-02, *Attorney-General's Portfolio, Budget Related Paper No. 1.2*, p. 454 and 448.

34 Portfolio Budget Statements 2000-01, Prime Minister and Cabinet Portfolio, Part C, Agency Budget Statements, Office of National Assessments.

35 Commission of Inquiry into the Australian Secret Intelligence Service, *Report on the Australian Secret Intelligence Service*, Public Edition, March 1995, pp. 15-16.

36 Portfolio Budget Statement, 2001-02, *Prime Minister and Cabinet Portfolio, Budget Related Paper No. 1.14A*, p. 87 and 81.

in the form of electrical, magnetic or acoustic energy, for the purpose of meeting the requirements of the Government, and in particular the requirements of the Defence Force, for such intelligence'. The DSD website states:

DSD's purpose is to support Australian Government decision-makers and the Australian Defence Force with high-quality foreign signals intelligence products and services. DSD makes Government and Defence policy more certain and more effective by providing the policy Departments and assessment agencies with important information that is not available from open sources. DSD also directly contributes to the military effectiveness of the ADF, and provides a range of information security services to ensure that their sensitive electronic information systems are not susceptible to unauthorised access, compromise or disruption.³⁷

- 1.52 DSD's budget comes under one line item which includes funding for the Defence Intelligence Organisation and the Defence Imagery and Geospatial Organisation. The total budget appropriation for these agencies in 2001-02 is \$385 million.³⁸

Defence Intelligence Organisation

- 1.53 The role of the Defence Intelligence Organisation (DIO) 'is to provide intelligence to inform defence and government policy and planning, to support the planning and conduct of Australian Defence Force operations.'³⁹ The IGIS stated:

DIO is an intelligence assessment agency, rather than a collector of intelligence. This means that its day to day activities are unlikely to impinge upon the privacy of Australians. This is recognised in the *Inspector-General of Intelligence and Security Act 1986*, which places DIO on the third tier of the agencies for which the IGIS has oversight responsibilities (alongside the other assessment agency, ONA).⁴⁰

37 DSD website: <http://www.dsd.gov.au/background2.html>

38 Portfolio Budget Statement, 2001-02, *Attorney-General's Portfolio, Budget Related Paper Nos. 1.4A and 1.4C*, p. 64.

39 Inspector-General of Intelligence and Security, *Annual Report 1999-2000*, p. 35.

40 Inspector-General of Intelligence and Security, *Annual Report 1999-2000*, p. 35.

Defence Imagery and Geospatial Organisation

- 1.54 The Defence Imagery and Geospatial Organisation (DIGO) 'has prime responsibility for the acquisition and interpretation of imagery, and for the acquisition and exploitation of geospatial data.' The IGIS commented that in 'simple terms this means that DIGO collects and analyses images of foreign and domestic subjects (eg. landforms, waterways, disputed territories etc) for a range of Commonwealth agencies and the Australian Defence Force.'⁴¹
- 1.55 The IGIS reported in October 2000 that the IGIS Act makes no reference to DIGO. DIGO was previously a part of DIO. The IGIS reported that the IGIS Act needs to be amended to ensure that it is subject to oversight. The IGIS and the Director of DIGO have agreed that DIGO will be subject to oversight by the IGIS 'as if the IGIS Act had already been amended.'⁴²

Inspector-General of Intelligence and Security

- 1.56 The Inspector-General of Intelligence and Security (IGIS) functions are set out under the *Inspector-General of Intelligence and Security Act 1986*. The IGIS helps Ministers responsible for the six agencies described above to oversee and review their activities. The IGIS Annual Report states that the 'purpose of this oversight and review is to ensure that the agencies act legally and with propriety, comply with ministerial guidelines and directives and respect human rights.'⁴³
- 1.57 The IGIS can undertake an inquiry on the basis of a reference from a Minister. The IGIS also has the power to independently initiate inquiries. In relation to IGIS's oversight of ASIS, Samuels and Codd stated:

IGIS has oversight responsibilities in respect of ASIS for the Service's compliance with Australian law, compliance with directions or guidelines given by the Minister, the propriety of particular activities, staff grievances, and acts or practices referred to IGIS by the Human Rights and Equal Opportunity Commission. There are, however, substantial limits on the scope of inquiries under these headings. IGIS may not inquire into ASIS of his or her own motion or in response to a complaint unless the complainant is an Australia citizen or resident, or the complainant or matter of concern involves a possible breach of Australian law...

41 Inspector-General of Intelligence and Security, *Annual Report 1999-2000*, p. 33.

42 Inspector-General of Intelligence and Security, *Annual Report 1999-2000*, p. 33.

43 Inspector-General of Intelligence and Security, *Annual Report 1999-2000*, p. 1.

Most of ASIS's activities take place overseas, have no direct effect on Australians and have no potential to breach Australian law. The areas of ASIS's activities in which IGIS may initiate own-motion inquiries is therefore small.⁴⁴

- 1.58 For 2001-02 IGIS's average staff level is 4.6 and total appropriations for the office of the IGIS in 2001-02 is \$634 000.⁴⁵

Objectives, scope and focus

- 1.59 The objective of the review is to inquire into and report on the proposed legislative reforms in the Intelligence Services Bill 2001, the Intelligence Services (Consequential Provisions) Bill 2001, and the provision in the Cybercrime Bill 2001 relating to ASIS and DSD – Liability for Certain Acts. The Senate Legal and Constitutional Legislation Committee is also reviewing the Cybercrime Bill 2001 and is expected to report by 21 August 2001.
- 1.60 The review will examine and comment on those clauses which, in our opinion, require assurance or amendment.

Conduct of the review

- 1.61 Information about the inquiry was advertised in *The Australian* on 4 July 2001 in the *Canberra Times*, *Sydney Morning Herald*, and *The Age* on 7 July 2001. On 4 July 2001 the Committee Chairman issued a press release outlining the objectives of the review and encouraging public comment.
- 1.62 In addition, submissions were sought from a range of government agencies, non-government organisations and individuals. Information about the inquiry was also posted on the Committee's internet homepage at: <http://www.aph.gov.au/house/committee/jscis/index.htm>
- 1.63 Twenty one submissions were received which are listed at Appendix A. One exhibit was received which is listed at Appendix B.

44 Commission of Inquiry into the Australian Secret Intelligence Service, *Report on the Australian Secret Intelligence Service*, Public Edition, March 1995, p. 16.

45 Portfolio Budget Statement, 2001-02, *Prime Minister and Cabinet Portfolio, Budget Related Paper No. 1.14A*, p. 125.

- 1.64 During the inquiry, the Committee received a private briefing from the Minister for Foreign Affairs and representatives of ASIS and DSD.
- 1.65 Evidence was taken at public hearings held in Canberra on 31 July, 1 August and 20 August 2001. A list of witnesses appearing at the hearings can be found at Appendix C.
- 1.66 Copies of the transcript of evidence from the public hearings and the volume of submissions are available from the Committee secretariat and for inspection at the National Library of Australia. The transcripts of evidence are also available from the Hansard website at: <http://www.aph.gov.au/hansard/>.

Report structure

- 1.67 The report structure reflects the key parts of the IS Bill. Chapter 2 examines Part 2 of the IS Bill – Functions of the agencies. This chapter examines key clauses of the Bill relating to ASIS’s and DSD’s functions, liability for certain acts and rules to protect the privacy of Australians.
- 1.68 Chapter 3 reviews Part 4 of the IS Bill – Committee on ASIO and ASIS.
- 1.69 The final chapter addresses other matters which arose in the review including the scope of defined terms, the framework for briefing the Leader of the Opposition, and the protection of the identity of agency staff.