



Information and Security Law Division

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SUBMISSION TO THE PARLIAMENTARY JOINT COMMITTEE ON THE AUSTRALIAN SECURITY INTELLIGENCE ORGANISATION

PUBLIC REPORTING ACTIVITIES OF ASIO

Introduction

1. The Attorney-General's Department administers the *Australian Security Intelligence Organisation Act 1979* (the Act) which governs the activities of the Australian Security Intelligence Organisation (ASIO). The Department works closely with ASIO in the development of policy and the provision of legal advice on the operation of the Act. The Department also administers the *Telecommunications (Interception) Act 1979* which provides the authority for the Attorney-General to issue warrants enabling ASIO to intercept telecommunications. Again, the Department works closely with ASIO providing policy and legal advice on telecommunications interception.

2. This close working relationship and the need to provide advice to the Attorney-General from time to time on the administration of the legislation and ASIO's compliance, has provided a unique vantage point from which to view ASIO's public reporting activities. There has been a steady progression from a closed and insular organisation to today's more open (within the constraints of security requirements) organisation that displays a confidence in its abilities and a sense of comfort with outside scrutiny.

3. Listed below are those public reporting activities and accountability mechanisms that we believe have led to the modern day ASIO. Many of these are dealt with in greater detail in ASIO's submission to the Committee.

Annual report and other publications by ASIO

Annual report

4. The public annual report produced by ASIO is necessarily limited by the extent to which ASIO's work is classified. Section 94 of the Act requires the production of an annual report by ASIO but section 94(4) requires a copy of the report tabled in Parliament to be amended to make deletions necessary to avoid prejudice to security, the defence of the Commonwealth, the conduct of the Commonwealth's international affairs or the privacy of individuals. However the Department's view is that the public version of the annual report, which includes most of the material contained in the classified report, contains sufficient

detail to provide members of the public with a reasonably comprehensive idea of ASIO's role and practices. Over the last ten years ASIO has made every effort to keep the amount of material deleted from the public version of the report to a minimum.

Public knowledge about ASIO

5. The annual report and other publications by ASIO (such as 'ASIO Now') should provide members of the public with sufficient information about the role and functions of the organisation. The availability of this information however is probably not widely known and perhaps more could be done to publicise ASIO's role and functions.

Website

6. The introduction of a website for ASIO should go some way towards mitigating any problem with public misconceptions even if direct access to the web is not available to all members of the public. If journalists have ready access at a website to reliable information, such as that included in the public annual report and 'ASIO Now', media reports on ASIO's activities may be more accurate and useful. The usefulness of the website could be enhanced if it were to include summaries of media interviews by the Director-General of Security and summaries of public speeches made by the Director-General.

ASIO and the multicultural society

7. People whose first language is not English may have particular problems with understanding the role of ASIO. This problem could be greater for recent arrivals from countries where police, intelligence and security services have a more invasive role or greater powers than they do in Australia. It would be useful if public information pamphlets were available in a number of community languages. It is acknowledged that there may be a substantial resource problem in providing translations in the necessary number of languages and that this may preclude this concept being implemented.

Public Accountability

8. Public reporting and general openness in administration go some way towards providing a reasonable measure of public accountability and to improving the public understanding of ASIO's role. There are a number of examples of this.

9. ASIO's primary accountability is to the Attorney-General and through the Attorney-General ultimately to the Parliament. In terms of the Parliament itself, there is the Parliamentary Joint Committee on ASIO which has the power to review aspects of the activities of the Organisation that are referred to it either by the Minister or on a motion of either House of the Parliament. The Director-General regularly briefs the Committee. Similarly the Director-General attends Senate Estimates Committee hearings, and in the course of the past year, has given evidence to the Senate Legal and Constitutional References Committee and the Scrutiny of Bills Committee.

10. On another level the *Inspector-General of Intelligence and Security Act 1986* establishes the office of the Inspector-General whose functions include responding to

complaints made about ASIO relating to ASIO's compliance with the law and with Ministerial directions or guidelines and to the propriety of ASIO's activities and its respect for human rights.

11. Finally, the Act provides for appeals to the Administrative Appeals Tribunal where ASIO has made an adverse or qualified security assessment about a person. This provides another opportunity for ASIO's processes and procedures to be put to the test.

Archives Act 1983

12. Part of the accountability process is the access given to ASIO records under the Archives Act where the records are more than 30 years old. It is, therefore, not a procedure which provides for contemporary accountability as it is a form of historical reporting 30 or more years after the event. Nevertheless it is worth noting that about 85% of material sought under the Archives Act is released in whole or in part.

13. In any release of information by ASIO the desirability of keeping the public informed has to be balanced against the need to exempt from disclosure information which, if released, could reasonably be expected to damage Australia's national security. It should also be balanced against the harm release of information may do to individuals. For example it is important to protect the identity of confidential sources of information; it is also desirable to minimise injury to people who may be referred to in ASIO documents and who are not sources of information.

14. Section 33(1)(g) of the Archives Act provides that a Commonwealth record is an exempt record if it contains information relating to the personal affairs of any person (including a deceased person) the disclosure of which would be unreasonable. The Department has been advised that in practice ASIO usually only advises that exemptions should be claimed for its records under the Archives Act under

section 33(1)(a) – damage to the security, defence or international relations of the Commonwealth;

section 33(1)(b) – information or matter communicated in confidence by or on behalf of a foreign government being information or matter the disclosure of which under this Act would constitute a breach of that confidence; and

section 33(1)(e)(ii) – disclose, or enable a person to ascertain, the existence or identity of a confidential source of information in relation to the enforcement or administration of the law.

15. ASIO and the National Archives have an agreement whereby National Archives is responsible for exemptions relating to the unreasonable disclosure of information relating to the personal affairs of any person under section 33(1)(g). It is understood this agreement was reached in response to possible public perceptions that ASIO might misuse section 33(1)(g) to exempt information which it could not otherwise exempt.

16. National Archives does not therefore, routinely receive advice from ASIO on claiming exemptions for unreasonable disclosure of information relating to the personal affairs of any person under section 33(1)(g) but ASIO does draw the attention of the National Archives to matters of an extremely personal nature. Examples include the name of a rape victim or a victim of paedophilia. National Archives does have guidelines on the release of information relating to the personal affairs of any person including, for example, information regarding such matters as the political affiliations and beliefs of a person.

Financial Management and Accountability Act 1997

17. The *Financial Management and Accountability Act 1997* (FMA Act) and the regulations under that Act provide that for intelligence and security agencies the annual financial statements provided to the Auditor-General for audit must be in accordance with an agreement between the Finance Minister and the Minister responsible for the Agency which in this case is the Attorney-General. Under the agreement information in the notes to the financial statements does not include operationally sensitive information. Nor is operational expenditure separately identified.

18. The Auditor-General is required to report to the Attorney-General whether the financial statements have been prepared in accordance with the above agreement. A copy of the financial statements and the Auditor-General's report or reports are required to be included in ASIO's annual report which is tabled in Parliament.

Public reporting by other agencies

19. It is understood that the submission to the Committee from ASIO will include comparisons on public reporting with some international intelligence and security organisations. It is also understood that ASIO has advised the Committee that ASIO is the only member of the Australian intelligence community (excluding the Inspector-General) to provide a public report although all Australian intelligence and security agencies, including ASIO, provide a classified annual report to Ministers. The Inspector-General is required to provide an annual report to the Prime Minister but deletions are made in preparing the public version of that report to avoid prejudice to security, defence and foreign relations as well as for the privacy of individuals. The basis for these deletions is similar to those made to the ASIO Annual Report.

20. Section 67 of the *Australian Federal Police Act 1979* requires the Australian Federal Police to produce an annual report. In contrast to the annual reporting requirement to which ASIO is subject section 67 does not provide for an edited public version of the AFP annual report.

Conclusion

21. Given the constraints imposed by the very nature of its work, ASIO's reporting and public activities strike the correct balance between the need for secrecy and public accountability.

Attorney-General's Department
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