

Reports and Activities 2004-2005

Reports

- 2.1 The last twelve months has been a 'short' parliamentary year due to the occurrence of the general election between 31 August and the re-establishment of the Committee on 9 December. The Committee's work program was, therefore, shortened. Since the last Annual Report of Committee Activities, 2002-2003, which was tabled in June 2004, the Committee has finalised the annual review of administration and expenditure and considered a number of regulations listing terrorist organisations.

Review of administration and expenditure for ASIO, ASIS and DSD

- 2.2 This report was tabled on 14 March 2005. It is the third review of administration and expenditure as required under section 29(1)(a) of the Intelligence Services Act. The report noted the sustained concerns about the security environment and the consequent expansion in both budgets and operations of the intelligence agencies.

Australia's intelligence agencies - their budgets, operations, administration and organisational structures - have expanded substantially. Since 11 September 2001, more than \$3 billion has been committed to security and intelligence initiatives. ... [The review] reflects the concern of the Committee that rapid

expansion can bring with it unavoidable stresses and strains in organisations at a time when they can least afford it.¹

- 2.3 Of particular concern in this review was the ability of the Committee to scrutinise effectively the agencies' financial statements or its administration. The Committee recommended the release to it on a confidential basis of additional information: the classified annual reports from each agency; relevant information and reports from the Auditor-General; financial statements for DSD, separate from the Department of Defence financial statements; an unclassified version of the ASIS staff code of conduct; and the results of the polygraph trial. In addition, the Committee believes that the Australian National Audit Office should conduct a rolling program of performance audits to provide a comprehensive coverage of agency administration.

Criminal Code Act 1995 – The proscription of terrorist organisations

The review of the listing of the Palestinian Islamic Jihad

- 2.4 The Committee conducted the first review of the use of the proscription power under the *Criminal Code Amendment (Terrorist Organisations) Act 2004* at the end of the last Parliament. On 3 May 2004, the Attorney-General, Hon Philip Ruddock, MP, announced that the Government had gazetted a regulation listing the Palestinian Islamic Jihad (PIJ) as a terrorist organisation under Australia's counter terrorism laws.
- 2.5 The PIJ was the 17th organisation to be banned by the Commonwealth Government. However, it was the first organisation listed as a terrorist organisation by regulation under the *Criminal Code Amendment (Terrorist Organisations) Act 2004* and the first that had not been designated as a terrorist organisation by the United Nations Security Council or otherwise designated as a terrorist organisation by specific legislative amendment.
- 2.6 In its first review, the Committee noted that the definition of a terrorist organisation in the Act was very broad and sought to understand how the Director General of Security and the Attorney-General decided which organisations should be proscribed. The

1 Parliamentary Joint Committee on ASIO, ASIS and DSD, *Review of administration and expenditure for ASIO, ASIS and DSD*, tabled 14 March 2005, p. viii.

Committee sought an indication from ASIO of the weight that was placed on any Australian links, either financial or personnel, that an organisation might have. This concern emerged out of the emphasis that the Attorney-General had put on Australian connections in the parliamentary debates on the Bill. In the case of the PIJ there were no such links.

- 2.7 The Committee was also concerned that the process of proscribing organisations did not cut across peace processes. Specifically, it argued that :

[T]he Committee would also note there are circumstances where groups are involved in armed conflict and where their activities are confined to that armed conflict, when designations of terrorism might not be the most applicable or useful way of approaching the problem. Under these circumstances - within an armed conflict - the targeting of civilians should be condemned, and strongly condemned, as violations of the Law of Armed Conflict and the Geneva Conventions. The distinction is important. All parties to an armed conflict are subject to this stricture. Moreover, these circumstances usually denote the breakdown of democratic processes and, with that, the impossibility of settling grievances by democratic means. Armed conflicts must be settled by peace processes. To this end, the banning of organisations by and in third countries may not be useful, unless financial and/or personnel support, which will prolong the conflict, is being provided from the third country.

- 2.8 The Committee, nevertheless, did not recommend disallowance of this regulation.

Review of the listing of six terrorist organisation

- 2.9 The debate about the listing process has continued into the new Parliament. The Attorney-General made regulations regarding six organisations at the end of the 40th Parliament and at the beginning of the 41st Parliament. These were all re-listings of organisations which had been proscribed under the previous system, but were subject to re-listing after a prescribed interval of three years. The *Review of the listing of six terrorist organisations* was tabled on 7 March 2005.
- 2.10 This report expressed concerns about the processes used by both the Attorney-General's Department and the Department of Foreign

Affairs in the making of the regulations. Specifically, on consultations with the states and territories as required under the Inter-governmental Agreement on Counter-Terrorism, the Committee concluded:

To write to the States and Territories within twenty-four hours or even four days of a regulation being made is to provide no opportunity for them to respond. The regulation would have been in place before the Premiers or Chief Ministers even saw the correspondence.

...

The consultation process did not comply with the agreed protocol nor allow it to be given any effect.

- 2.11 Consultation with the Department of Foreign Affairs on a proposed listing was a Committee request in its first report. This request related to the Committee's wish to understand Australia's interests in relation to a particular listing, not just our security interests, but also the broader strategic interests; how a particular organisation fitted into the conflicts of which it might be a part; to what extent the violence might be directed towards those localised struggles or form part of international terrorism; and what might be the impact of a listing, if any, on efforts to resolve a conflict.
- 2.12 The Committee was disappointed with the Department's response which seemed, at best, to be perfunctory.
- 2.13 On the question of how ASIO decides which organisations should be proscribed, some progress was made in that ASIO gave the Committee a list of criteria. The criteria included the necessity for a link to Australia and excluded organisations on the basis that they were part of a peace process. This was extremely valuable to the Committee.

Inspections and briefings

Visit to Pine Gap

- 2.14 On 21 July 2004, three members of the Committee visited Pine Gap. The inspection was conducted in conjunction with the Defence Sub-Committee of the Joint Standing Committee on Foreign Affairs, Defence and Trade.

- 2.15 The following visitors briefed the Committee in the last twelve months:
- Mr Philip Flood, Convenor, Inquiry into Australian intelligence agencies, 5 August 2004;
 - Senator Richard Shelby and Congressman Robert Cramer, accompanied by the Ambassador of the United States, HE Mr J. Thomas Schieffer, 11 August 2004;
 - Interim Committee on National Security of the Canadian Parliament, 12 August 2004;
 - The UK Intelligence and Security Committee, 27 September 2004;
 - Mr Dennis Richardson, Director-General of Security, ASIO, 1 February 2005;
 - Mr David Richmond, Deputy Secretary of the Joint Intelligence Committee, United Kingdom, 8 February 2005;
 - Mr Ian Carnell, the Inspector General of Intelligence and Security, 10 March 2005; and
 - Mr William Erhman, Chairman of the Joint Intelligence Committee, United Kingdom, 15 March 2005.
- 2.16 In addition, the secretariat met with staff of the United States Senate Select Committee on Intelligence on 30 June 2004. Of particular interest was the report then being finalised in the United States on the matter intelligence on Iraq prior to the war in Iraq.
- 2.17 Further discussions on intelligence on Iraq and the Butler review were held in London on 20 and 21 July 2004 between the secretary of the ASIO ASIS and DSD Committee and the secretaries of the United Kingdom Intelligence and Security Committee and the Joint Intelligence Committee.

Conferences

- 2.18 Since its establishment in March 2002, the Committee has participated in an international conference for the committees and agencies charged with the oversight of intelligence agencies. The first such conference to which members were invited was held in London in May 2002. It was attended by two members of the Committee and the secretary. Last year, the Conference was held in

Washington; however, members of the Committee were precluded from attending because of the general election in Australia. The secretary represented the members and her report of the proceedings is outlined in Chapter 3.