

## Delegation to Washington D.C. and London

### Introduction

- 3.1 The *Intelligence Services Act 2001* (IS Act) provides a new framework for the oversight of ASIO, ASIS and DSD. As indicated in chapter one, the history of oversight of the Australian intelligence community is relatively recent and evolving.
- 3.2 The Committee has operated for less than a year under the IS Act. While the broad framework appears to be an effective framework for oversight, there is still much to be developed in creating and implementing an effective model of annual review, and, where necessary, focused reviews on aspects of administration and expenditure.
- 3.3 Australia is not alone in seeking to enhance the quality and effectiveness of its oversight of intelligence agencies. It is recognised that much can be learnt from the oversight systems of other countries. The International Intelligence Review Agencies Conference, which is held every two years, provides an opportunity for representatives of various countries to meet and share information about their systems of oversight.
- 3.4 The third International Review Agencies Oversight Conference was held in London between 13 and 14 May 2002. The countries that attended included Australia, Belgium, Canada, New Zealand (NZ), Poland, Slovakia, South Africa and the United States (US).

- 3.5 The Chairman, Mr Jull, and Mr McLeay represented the Committee at the conference and received status as an additional parliamentary delegation approved by the Prime Minister. To maximise the value of the travel, the delegation travelled via Washington D.C. and met with key Congressman and officials.
- 3.6 This chapter reports on the outcome of meetings held in Washington D.C. between 8 and 9 May and the key agenda topics and findings from the Third International Review Agencies Oversight Conference. In addition, this chapter fulfils the delegation's obligation to report to the Parliament.

## **Washington D.C. – 7-8 May 2002**

- 3.7 The delegation received approval to travel to Washington D.C. and London about two weeks before the start of the conference. Australian Embassy officials in Washington D.C. responded quickly and effectively to the task of arranging a series of meetings with key officials during the period of 7–8 May 2002. The delegation appreciated the advice and support provided by the Ambassador to the US, HE Mr Michael Thawley.
- 3.8 The following provides an overview of the delegation's program and discussion with US interlocutors. For security reasons, certain officials cannot be named and certain classified information is not included.

## **House Permanent Select Committee on Intelligence**

- 3.9 The delegation's first objective was to meet with representatives of relevant congressional committees to discuss oversight methods, powers and limitations in the US federal system.
- 3.10 On Thursday, 9 May the delegation met with the Chairman of the House Permanent Select Committee on Intelligence, Congressman Porter Goss, and Congressman Doug Bereuter, Chairman of the House Sub-Committee on Intelligence Policy and National Security. The key objectives of the House Permanent Select Committee is discussed on the US Committee's website:

Although it is important to have a robust intelligence capability, it is also important to have an effective oversight process to ensure that intelligence resources are not misused and that intelligence activities are conducted lawfully. Intelligence operations and law enforcement activities are governed by laws which are not in all cases the same. Ensuring that these laws are followed is a key component of our oversight responsibilities and was the primary reason for the creation of the congressional intelligence committees.<sup>1</sup>

- 3.11 There are twenty members on the House Permanent Select Committee on Intelligence plus two ex-officio members. Membership is limited to a 6 to 8 year period at which point rotation must occur.
- 3.12 The House Permanent Select Committee has a significant role in scrutiny of the intelligence budget. In particular, because the intelligence budget is classified, the Committee is required to undertake 'an extra amount of congressional scrutiny, and there is a legal requirement that intelligence funding not only be appropriated, but authorized as well.'<sup>2</sup>
- 3.13 The power of authorisation is a significant difference between the role of US congressional committees and those that operate in Australia. The role of the Parliamentary Joint Committee on ASIO, ASIS and DSD is to review administration and expenditure. The role does not include scrutiny of operational matters and there are no powers of authorisation.
- 3.14 Following the tragic events of 11 September 2001 (9-11), the House Permanent Select Committee issued a press release condemning the terrorist atrocity. As a result of the events of 9-11, the House Permanent Select Committee joined with the Senate Select Committee on Intelligence to conduct a joint inquiry. The preamble to the scope of inquiry stated:

To reduce the risk of future terrorist attacks; to honor the memories of the victims of the September 11 terrorist attacks by conducting a thorough search for facts to answer the many questions that their families and many Americans have raised; and to lay a basis for assessing the accountability of institutions and officials of government.<sup>3</sup>

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1 House Permanent Select Committee on Intelligence, see website at: <http://intelligence.house.gov/>

2 House Permanent Select Committee on Intelligence, see website at: <http://intelligence.house.gov/>

3 House Permanent Select Committee on Intelligence, see website at: <http://intelligence.house.gov/PDF/jointinquiryscope.pdf>

## Meetings with Intelligence Agencies

- 3.15 A second objective of the Washington D.C. briefings was to meet with representatives from key intelligence agencies. The purpose was to examine how these agencies report and account for their activities to the Congress. In particular, it was important to explore the techniques and methods which help to create an effective relationship between Congress and executive government agencies. In addition, the delegation sought to examine the effectiveness of the relationship between US agencies and the corresponding Australian agencies.
- 3.16 The delegation met with the following officials and agency representatives:
- Assistant Secretary of Defence for Intelligence Oversight;
  - Special Assistant to the President and Senior Director for Intelligence Programs, National Security Council;
  - Central Intelligence Agency (CIA); and
  - National Security Agency (NSA).

## Assistant Secretary of Defence for Intelligence Oversight

- 3.17 On Thursday, 9 May the delegation met with Mr George B Lotz II, Assistant to the Secretary of Defence for Intelligence Oversight (ATSD (IO)). The purpose of the ATSD (IO) is to ensure that 'Intelligence Oversight policies and regulations are carried out by Department of Defence (DoD) organizations that perform intelligence functions.'<sup>4</sup>
- 3.18 The ATSD (IO) conducts inspections and investigations 'to ensure that all activities performed by intelligence units and personnel are conducted in accordance with federal law, Presidential Executive Orders, DoD directives, regulations, policies, standards of conduct, and propriety.'<sup>5</sup>
- 3.19 The ATSD (IO) is also responsible for the management and direction of the DoD Intelligence Oversight program. The 'aim of the DoD program is to institutionalize:

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4 <http://www.dtic.mil/atstdio/>

5 <http://www.dtic.mil/atstdio/>

- the orientation and training of all intelligence personnel in intelligence oversight concepts;
  - an internal inspection program, and
  - a channel for the reporting of questionable or improper intelligence activities to the ATSD (IO) and the DoD General Counsel, who are responsible for informing the Secretary and Deputy Secretary of Defense.<sup>6</sup>
- 3.20 The ATSD (IO) is responsible for oversight of all intelligence activities in the DoD. This comprises the intelligence activities undertaken in eight agencies which include the:
- Defence Intelligence Agency
  - National Security Agency
  - US Army
  - US Navy
  - US Airforce
  - US Marine Corps
  - National Imaging and Mapping Agency
  - National Reconnaissance Office
- 3.21 The ATSD (IO) conducts investigations at the request of the Secretary of Defence, or on his own initiative. The ATSD (IO) is responsible for the production of a quarterly report which is submitted to the Intelligence Oversight Board through the Secretary of Defence. The reports are prepared in coordination with DoD General Counsel.
- 3.22 The ATSD (IO) does not report to Congress but can be requested to provide a briefing.

### **Special Assistant to the President and Senior Director for Intelligence Programs, National Security Council**

- 3.23 The delegation met with the Special Assistant to the President and Senior Director for Intelligence Programs, National Security Council. The issues discussed focused on developments since 9 September 2001.

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6 <http://www.dtic.mil/atstdio/>

## Central Intelligence Agency (CIA)

- 3.24 The delegation met with the Deputy Director for Community Management, CIA. The major issue discussed focused on the reporting relationship between the CIA and Congress. Congressional scrutiny is intense and there is increasing focus by Congress on outcomes achieved by the Budget.
- 3.25 The CIA is subject to oversight by six oversight committees which comprise two appropriations, two intelligence and two defence committees.

## National Security Agency (NSA)

- 3.26 The NSA is the key signal intelligence (SIGINT) agency of the US Government. The NSA 'coordinates, directs, and performs highly specialised activities to protect U.S. information systems and produce foreign intelligence information.'<sup>7</sup> The NSA claims to employ the country's premier code makers and code breakers.
- 3.27 The delegation met with the Director of the NSA, Lt General Michael Hayden.

## International Intelligence Review Agencies Conference

### Background and purpose

- 3.28 The third International Intelligence Review Agencies Conference was held in London between 13 and 14 May 2002. The conference was hosted by the UK Intelligence and Security Committee. The conference was originally to be held in Washington D.C. during October 2001. The attacks on the US in September resulted in the postponement of the conference and the rescheduling of the conference in London.
- 3.29 The countries that attended the conference included:
- |              |               |
|--------------|---------------|
| Australia    | Belgium       |
| Canada       | New Zealand   |
| Poland       | Slovakia      |
| South Africa | United States |

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7 [http://www.nsa.gov/about\\_nsa/index.html](http://www.nsa.gov/about_nsa/index.html)

- 3.30 The oversight agencies that attended the conference came from various arms of government. For example, the US delegation consisted solely of oversight officials from executive government. In contrast, the UK delegation comprised members of the UK Intelligence and Security Committee. The Australian delegation consisted of two members of the Parliamentary Joint Committee on ASIO, ASIS and DSD, and the Inspector-General of Intelligence and Security (IGIS).
- 3.31 The purpose of the conference is to provide participants with the opportunity to discuss, examine and compare the oversight systems that operate in different countries.
- 3.32 The two day conference was divided into six sessions which comprised:
- Session one Introduction and presentations
  - Session two Oversight: an agency's perception
  - Session three Secret intelligence and law enforcement
  - Session four Public perception and oversight
  - Session five Technology and oversight
  - Session six Closing remarks

### **Session one: Introduction and presentations**

- 3.33 The first session provided an opportunity for each delegation to outline their system of oversight. The systems of oversight were variable and at different stages of development. A useful tool arising from the conference was the production of a table showing a comparison of Inspector-General and the Intelligence and Security Committee functions, freedoms and powers. This table is reproduced in appendix C.
- 3.34 The major elements of each countries' oversight system is described briefly in the following sections.

### **Belgium**

- 3.35 Belgium did not have an oversight system until 1993, at which point it established the Permanent Committee for Control of the Intelligence Services. The Permanent Committee scrutinises the two Belgian services responsible for state security and military intelligence.

## Canada

- 3.36 Canada was represented by three oversight elements which comprise the Security Intelligence Review Committee (SIRC) which supervises the Canadian Security Intelligence Service (CSIS), the Inspector-General of CSIS, and the Commissioner for the Communications Security Establishment (CSE) which is the Canadian SIGINT organisation. The SIRC noted that its role was to review CSIS performance and investigate complaints about its activities. The chair of the SIRC, the Hon Paule Gauthier suggested that the work of SIRC had become more complex since 11 September.
- 3.37 The Inspector-General of CSIS noted that while the Inspector-General and SIRC had different roles, there was the potential for overlap. It was essential that this possibility be avoided and it was imperative that they did not give contrary advice to the Solicitor-General.

## New Zealand

- 3.38 New Zealand was represented by the Inspector-General of Intelligence and Security (NZ IGIS). New Zealand does have a Parliamentary Intelligence and Security Committee which is chaired by the Prime Minister and its members are Cabinet Ministers. It was reported that this committee meets infrequently.
- 3.39 The NZ IGIS has oversight of the New Zealand Security Intelligence Service (NZ SIS) and the Government Communications Security Bureau but not the External Assessments Bureau or the Directorate of Defence Intelligence and Security. The NZ IGIS can inquire into any matter relating to compliance by the agencies with the law, into complaints by individuals, into the propriety of the agencies' activities, and is required to review the effectiveness and appropriateness of the warranted interception procedures of the NZ SIS.

## Poland

- 3.40 Poland was represented by delegates from the Commission for Special Services (CSS), which reports to the Sejm (Polish Parliament), and the Council for the Security and Intelligence Services which reports to the Prime Minister. The CSS is responsible for oversight of the State Security Office and the Armed Forces Information Services. The conference was advised that draft legislation that would soon come into force would split the State Security Office into the Foreign Intelligence Agency and the Internal Security Agency responsible for counter-intelligence.



## Slovakia

- 3.41 Slovakia, as a nation, was only nine years old and has been developing its security and intelligence oversight structure during this period. Slovakia's delegation included the Chair of the Special Committee of the National Council of the Slovak Republic, the Vice-Chairman of the Defence and National Security Committee and the Acting Chairman of the Military Intelligence Oversight Committee.
- 3.42 The Special Committee was appointed each year by the Slovakian Parliament. Its members were authorised to enter the premise of the security and intelligence agencies, who were required to provide information on their administration, budgets and policies. In addition, the agencies were required to report on the way operations were conducted and the results that were achieved.

## South Africa

- 3.43 South Africa's delegation included the Minister of State for Intelligence Services and the Chair of the Joint Standing Committee on Intelligence. The four elements of South Africa's oversight system comprise executive government through the control of the Minister of State for Intelligence Services; the Judiciary through its responsibility for the issue of warrants; and the operation of the Inspector-General.
- 3.44 The Joint Standing Committee is appointed by the President and has 15 members. The Committee determines what issues it will investigate, and audits the finances of the security and intelligence services. The Committee provides an annual report to the Parliament.

## United Kingdom

- 3.45 The Intelligence and Security Committee (ISC) is established through the *Intelligence Services Act 1994*. It is a committee of nine backbench parliamentarians appointed by the Prime Minister. The Committee conducts investigations into the administration, expenditure and policy of the Secret Intelligence Service (SIS), the Security Service and the Government Communications Headquarters (GCHQ). The Committee provides the Prime Minister with an annual report. The Prime Minister is statutorily required to table the annual report subject to any deletions on security grounds. The Committee may also report to the Prime Minister at other times.

- 3.46 The ISC is different to the Australian Parliamentary Joint Committee on ASIO, ASIS and DSD in that it is a committee of parliamentarians, appointed by, and reporting directly to, the Prime Minister. The Australian Committee is a 'parliamentary committee' which reports directly to both Houses of Parliament. However, the Intelligence Services Act specifies that House of Representatives members of the Australian Committee 'must be appointed by resolution of the House on the nomination of the Prime Minister.' The members who are Senators must be appointed 'by resolution of the Senate on the nomination of the Leader of the Government in the Senate.'
- 3.47 The ISC, in its 1998-99 Annual Report, noted that the Home Affairs Committee concluded that the ISC should be replaced by an inter-departmental select committee which reported directly to Parliament rather than to the Prime Minister. The majority of the then ISC did not support this recommendation.
- 3.48 Another important difference between the ISC and the Australian Committee is the ISC scrutinises 'policy'. The Australian Committee is responsible for scrutinising administration and expenditure and the annual financial statements of the agencies.

## United States

- 3.49 The relevant Congressional oversight committees did not attend the conference. The oversight agencies that did attend were part of executive government. The individual oversight agencies that attended, scrutinise and provide oversight of their respective intelligence agency. The agencies that attended the conference included:
- **Defence Intelligence Agency (DIA) Inspector General.** The DIA Inspector General inquires into and reports upon matters relating to the performance of mission and state of discipline, economy, and efficiency of the DIA;
  - **National Imagery and Mapping Agency (NIMA), Office of Inspector General.** The NIMA Inspector General provides the director of NIMA with an independent assessment of the effectiveness, efficiency and integrity of Agency policies, programs and operations, and investigations of complaints or information concerning violation of law or regulation, mismanagement, gross waste of funds, abuse of authority, or denial of due process;

- **Central Intelligence Agency (CIA), Inspector General.** The position of the CIA Inspector General was created in 1989. The Inspector General reports directly to the Director of Central Intelligence and conducts an independent review function separate from the control of other segments of agency management;
- **Assistant to the Secretary of Defence for Intelligence Oversight (ATSD(IO)).** The ATSD (IO) is responsible for the independent oversight of all intelligence activities within the Department of Defence. In particular, the ATSD (IO) is charged by the Secretary of Defence with ensuring the Department's intelligence assets do not violate the Constitutional rights of US persons; and
- **National Security Agency (NSA) Inspector General.** The NSA Inspector General is responsible to the Director, NSA and the Chief, Central Security Service for conducting audits, inspections, and investigations of the organisations and activities of NSA/CSS and its affiliated organisations, activities and personnel.

## Session two – Oversight: an agency's perception

3.50 Representatives of the UK Secret Intelligence Service (SIS), the Security Service and the GCHQ gave a presentation and answered questions on their perception of oversight. The 'four pillars of oversight' in the UK include:

- **Ministerial:** Ministers are responsible to Parliament for the conduct of their agencies, and for approval of requirements, priorities and of sensitive operations;
- **Financial:** the Single Intelligence Vote provides the Agencies' budgets, and there is scrutiny by the National Audit Office and the Parliamentary Accounts Committee;
- **Legal:** there are various Acts which govern the activities of the agencies. In addition, the Interception of Communications Commissioner and the Intelligence Services Commissioner ensure that agency operations have been carried out in accordance with warrants and other authorisations issued under relevant acts; and
- **Parliamentary:** parliamentary scrutiny includes questions asked in the parliament, and the scrutiny role performed by the ISC.

- 3.51 The activities of the ISC, as they relate to the agencies, includes attendance at formal evidence sessions; informal agency briefings; visits to agency headquarters and outposts, customers and overseas partners; detailed investigations; and the presentation of an Annual Report to the Prime Minister and then to Parliament.
- 3.52 During the questions and answer part of the session, a range of issues were discussed during the presentation. The agencies have internal audit programs which, in the past, have focused on financial auditing. However, in recent times, there has been a shift to include assurance to management on the effectiveness of agency systems and advice on risk management issues.
- 3.53 The agencies indicated that the number of internal lawyers had increased in recent times. This was to ensure that there was effective advice on the internal systems designed to ensure the legality of operations, to advise on the impact of changes in the law and to deal with internal legal matters such as conditions of employment.
- 3.54 In relation to the provision of public information, the Security Service indicated that it had been conducting relations with the media for the past eight years and now had two full-time press officers. The Foreign and Commonwealth Office's New Department answered questions in relation to SIS.
- 3.55 A key issue in the relationship between the agencies and the ISC is access to sensitive agency information by the ISC. The agencies indicated that they would not provide information relating to personnel, particular operational matters and operational methods.

### **Session three – Secret intelligence and law enforcement**

- 3.56 Representatives of the National Criminal Intelligence Service and the National Crime Squad provided a briefing on their role in combating serious and organised crime. One of the lines of inquiry during this debate was whether there was any connection between organised crime and terrorism. While it was acknowledged that terrorism was financed in part through crime, it was reported that organised crime did not get involved in terrorism but used similar techniques.

## Session four – Public perception

- 3.57 The Rt Hon Sir Malcolm Rifkind, a former Foreign Secretary, and Professor Paul Rogers, Professor of Peace Studies at Bradford University convened session four. Sir Malcolm suggested that a range of developments were influencing public perception of the intelligence agencies and the role of oversight. For example, the end of the cold war had possibly reduced the requirement for secrecy on national security grounds. In addition, the development of sophisticated technologies relating to intelligence collection were more invasive and posed potential threats to civil liberties.
- 3.58 The ISC provides an annual report to the Prime Minister which is then tabled in the Parliament. The Prime Minister determines if information in the report is sensitive and will therefore have it deleted. Sir Malcolm suggested that there were too many deletions including all of the financial information contained in the appendices of the report. For example, Sir Malcolm asked why it was necessary to exclude from the financial reports information about pay and pensions. Some attendees, however, suggested that using a mosaic approach it was possible to extrapolate additional information about an agency from agency financial data such as pay and conditions.
- 3.59 Professor Rogers examined the issue of whether the ISC, in conducting its oversight role, was responsible for measuring the efficiency and effectiveness of the agencies. In addition, he suggested that, with the rise of new forms of conflict and violence directed at modern states, there was a need to widen the sources of analysis and input. For example, it was suggested that UK agencies should involve the academic community more in assisting agencies to develop their long term aims and 'establishing the drivers of violence against modern urban states.'
- 3.60 Professor Rogers suggested that it was essential that modern states understood why such groups as Al Qaida emerged rather than just focusing on preventing attacks or apprehending terrorists.
- 3.61 Session four produced some of the widest ranging debates of the conference. Some of the debate focused on access to information and public reassurance. Sir Malcolm argued that the intelligence agencies should be under constant pressure to justify the withholding of information. In regard to public reassurance, it was suggested that the key concern of the public was the adequacy of mechanisms to protect individual rights from alleged abuses by the agencies.

- 3.62 The effectiveness of the ISC was debated. In particular, a question was raised about the relationship between the agencies and the committee and whether or not the committee was subject to 'capture' by the agencies. For example, Lord Archer suggested that 'some parliamentary colleagues had still to make up their minds about the committee and might suspect it was too close to the Agencies or, at the extreme, that it had now become 'part of the conspiracy.'" While there was no clear answer to this issue, there was general agreement that oversight bodies should focus their scrutiny on accountability rather than seeking to control the work of agencies.
- 3.63 While concerns had been raised about access to information, there was also public concerns about the security of information. For example, were UK secrets and agency operational information held securely.
- 3.64 The final discussion topic focused on the security clearance process for individuals. It was indicated that in some jurisdictions complaints were made about the way in which interviews were conducted. Therefore, this could be a valid area of scrutiny for an oversight body.

## **Session five – Technology and oversight**

- 3.65 The Inspector General for the US Defence Intelligence Agency (IG DIA) discussed technical tools for assisting with the operation of oversight bodies. The Assistant Secretary of Defense for Intelligence Oversight (ATSD (IO)) discussed the application of technology to training.
- 3.66 Some of the technical tools that assisted with operations focused on ensuring high levels of security. The IG DIA relied on a dedicated communication system and separate computer network for investigations which was only accessible by IG staff. DIA had adopted the use of electronic signatures and encryption of unclassified material to ensure that only targeted individuals received the appropriate files and the readings and approvals were automatically registered.
- 3.67 In relation to the application of technology for training purposes, the ATSD (IO) indicated that the use of role playing was used to educate staff on the application of statutory rules.

## Session six – Closing remarks

- 3.68 The final session focused on the operation of future conferences. The conference delegates agreed that the next conference should be held in the US in 2004 and then in South Africa in 2006.
- 3.69 The development of agenda topics for the meetings should be developed by a small steering committee comprising current hosts, the next, and the next-but-one host. Therefore, the steering committee would comprise representatives from the UK, US and South Africa.
- 3.70 It was requested that each of the groups attending the conference should ensure that they provide the steering committee with:
- contact information for communication prior to future conferences; and
  - each oversight body should provide organisational details and charts showing where the oversight functions reside and the reporting chain for the individual or organisation.

## Conclusions

- 3.71 The Parliamentary Joint Committee on ASIO, ASIS and DSD is established under the IS Act which has been operating for less than a year. The first Committee established under the IS Act will seek to develop effective techniques and methods of scrutiny which will serve the needs of future Committees. The attendance of two Committee members at the International Intelligence Review Agencies Conference in London and meetings with the House Permanent Select Committee on Intelligence and relevant US intelligence agencies in Washington D.C. was timely and provided an excellent opportunity for the Committee to gain insight into the oversight systems operating in different countries.
- 3.72 In particular, the issues discussed at the conference and through meetings in Washington D.C. have helped to identify aspects of agency administration which could be the subject of future scrutiny. In addition, a comparison of oversight functions performed in the different jurisdictions has shown that there is a gap in the Australian oversight framework. The table in appendix C shows that there is no external efficiency auditing of ASIO, ASIS and DSD. This aspect is discussed in more detail in chapter two and an ameliorative recommendation has been made. This and other outcomes demonstrates a clear value in Committee members attending the International Intelligence Review Agencies Conference.

**DAVID JULL, MP**

Chairman

14 August 2002